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APPENDIX.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974.

No. 74-1245

LIBERTY MUTUAL INSURANCE COMPANY,
A CORPORATION,
Petitioner,

vs.

SANDRA WETZEL AND MARI ROSS, ON BEHALF OF THEMSELVES AND ALL OTHERS SIMILARLY SITUATED,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

PETITION FOR CERTIORARI FILED APRIL 2, 1975
CERTIORARI GRANTED MAY 27, 1975.

IN THE

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APPENDIX

DOCKET ENTRIES

72 169 Sandra Wetzel etc. vs. Liberty Mutual Ins.

Date 1972	Proceedings	
Feb. 28	Complaint Filed	1
Feb. 28	Summons Issued	1
Feb. 28	Pltfs Notice of service of Interrogatories to Deft (First Set) filed	2
Feb. 28	Pltfs Notice of service of Interrogatories to Deft (Second Set) filed	3
Feb. 28	Notice of taking the Depositions of Kenneth Raymond on 4-3-72, Wilford Aune on 4-6-72, Dick Dancer on 4-12-72 and James W. Roop on 4-17-72..	4
Feb. 28	Pltf's Request for Production of Documents—First Set filed	5
Feb. 28	Pltf's Motion for Class Action Determination filed	6
Mar 2	Marshal's Form 285 returned served on deft on 3-1-72	7
Mar. 9	Praecipe for appearance of Kalvin M. Grove and Robert A. Penney, Esqrs. as counsel for deft. filed...	8
Mar. 10	Praecipe for appearance for Liberty Mutual Ins. Co. filed by Clem R. Kyle, Esq.	9
Mar. 10	Memorandum order fixing preliminary conference of counsel for 4-4-72 at 11 A.M. (Weber, J.) ..	10
Mar. 14	Stipulation for extension of time to answer and proposed order filed	11

Mar. 14—Order ent. upon filing stip for extension of time, granting time to Liberty Mutual Ins. to answer to and including 4/20/72 (Weber, J.) 11

Apr. 5—Hearing on conference of counsel re deposition held before Weber, J. and concluded Cav. Memo. filed (protective order dictated on record of the deposition) 12

Apr. 5—Order ent. re pretrial schedule to be observed by parties (Weber, J.) 13

Apr. 19—Answer filed 14

May 1—Deft's Answers to pltfs Interrogatories (Second Set) filed. (Nos. 1-11) 15

May 1—Deft's Answers to pltfs Interrogatories (First Set) filed (Nos. 1-41) 16

May 16—Proposed demand for jury trial filed by pltf. .. 17

May 17—Memorandum order striking proposed demand for jury trial under Rule 383; directing that motion be filed under Rule 393; if motion is filed, deft. to respond in 15 days, matter will be decided on briefs (Weber, J.) 18

May 22—Notice, motion for jury trial and proposed order filed by pltfs 19

May 23—Order entered directing deft file a Response to Pltfs Motion for Jury Trial on or before 6-5-72 showing cause if any why the court should not order Jury Trial. (Weber, J.) 20

June 5—Deft's response to pltfs' motion for jury trial and proposed order filed 21

June 9—Memorandum Order directing Pltf file reply brief on or before 6-23-72 and court will determine matter of briefs. (Weber, J.) 22

June 28—Deposition of Kenneth W. Raymond filed 23

July 3—Motion for extension of time in which to file brief on pltfs' rule 23 motion and proposed order filed by deft 23A

July 5—Deft's response to pltf's reply brief re: Demand for Jury trial 24

July 5—Order entered extending to 7/21/72 the time for deft to submit brief in re Rule 23 motion (Weber, J.) 25

Aug. 1—Notice to counsel fixing argument on Motion for Class Action for 8/16/72 at 1:30 P.M. before Weber, J. 26

Aug. 4—Deposition of Kenneth W. Raymond filed 27

Aug. 16—Hearing held on Motion for Class Action Determination and Demand for Jury Trial before Weber, J. Hearing memo filed. (Rep. J. Lilienthal) (Concluded—Cav) 28

Aug. 17—Memorandum Order dated 8/16/72 entered granting pltf's Motion for determination of class action; order is conditional, subject to further Order. (Weber, J.) 29

Aug. 17—Order dated 8/16/72 entered deferring determination on pltfs' Demand for Jury Trial until pretrial conference. (Weber, J.) 30

Aug. 18—Notice of taking depositions of Edmund A. Carr on 9/11; of Daniel Phillips on 9/12 of W. Lawrence Usher on 9/13 filed by plfs 31

Aug. 29—Pltfs Notice of Service of Interrogatories to Deft-Third Set filed 32

Sept. 11—Notice, application for class notification with proposed notice and proposed order filed by pltfs .. 33

Sept. 14—Memorandum Order entered directing that before any notice is approved by this court it will have

to consider further the proposition of the class or sub class (Weber, J.) 34

Sept. 27—Deft's Answers to Pltf's Interrogs (Third Set) filed. (Nos. 1-26) 35

Oct. 6—Notice of depositions of Kenneth Spaulding and Kenneth Raymond on 10/17/72 at 10:00 A.M. and 3:00 P.M. respectively filed by Pltfs 36

Oct. 6—Notice of deposition of Marian Holliday on 10/18/72 at 2:00 P.M. filed by pltfs 37

Oct. 12—Notice, motion for production of documents and proposed order filed by pltfs 38

Oct. 13—Notice of service of Interrogs upon defts. filed by pltfs 39

Oct. 16—Motion for permission to obtain discovery and proposed order filed by deft 40

Oct. 17—Order entered directing deft to file response to Motion for Production by 11/1/72 and moving party file reply on or before 11/8/72. (Weber, J.) 41

Nov. 2—Response of Liberty Mutual Insurance Co. to Motion for Production of Documents, filed 42

Nov. 9—Motion for protective order and proposed order re pltfs' 4th set of interrogs. filed by deft 43

Nov. 9—Order entered directing that Court will hear counsel with respect to all pending discovery motions on 11/27/72 at 3:30 P. M. (Weber, J.) 44

Nov. 13—Deft's Answers to Pltfs Interrogs filed. (Nos. 1-11) 45

Nov. 14—Transcript of argument held 8/16/72 before Weber, J. filed (Rep. L. Lilientha) 46

Nov. 16—Deposition of Mari Ross filed 47

Nov. 16—Deposition of Sandra Wetzel filed 48

Nov. 16—Deposition of Wilfred B. Aune filed. (Taken 9/12/72) 49

Nov. 16—Deposition of Wilfred B. Aune filed. (Taken 10/13/72) 50

Nov. 16—Deposition of James W. Roop filed. (Taken 9/13/72) 51

Nov. 16—Deposition of James W. Roop filed. (Taken 10/13/72) 52

Nov. 16—Deposition of Richard R. Danser, filed. (Taken 9/11/72) 53

Nov. 16—Deposition of Richard R. Danser, filed. (Taken 10/13/72) 54

Nov. 16—Deposition of Marian Holliday filed 55

Nov. 27—Hearing held on Motion for Production, Motion for Permission to Obtain Discovery and Motion for Protective Order before Weber, J. and taken Cav. (Memo filed) (Rep. None) 56

Dec. 19—Transcript of Oral Argument held 11/27/72 before Weber, J. filed. (Rep: M. Mimless) 57

Dec. 19—Notice of fifth set of interrogs to deft filed by pltfs 58

Dec. 21—Deposition of Daniel D. Phillips filed 59

Dec. 21—Deposition of Edmund A. Carr filed 60

Dec. 21—Continued Deposition of Edmund A. Carr filed 61

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Jan. 18—Motion for Protective Order filed by deft 62

Jan. 19—Deft's Answers to Pltf's Interrogs filed. (Nos. 1-46) (Fifth Set of Interrogs) 63

Jan. 22—Protective Order entered directing that deft's answer to pltf's interrogatory fifth Set No. 21 be placed in a sealed envelope and marked "To Be Opened Only as Directed by the Court. (Weber, J.) 63A

Jan. 30—Deposition of Kenneth Spaulding filed 64

Jan. 30—Continued Deposition of Kenneth W. Raymond 10/17/72 65

Feb. 2—Letter of 1/31/73 to Clerk with Sealed Fifth Set of Interrog No. 21 to Pltf with deft's answer thereon filed. (Placed in Safe per Order of 1/22/73) .....

Feb. 7—Memorandum Order entered Granting defts Motion for Protective Order in answering questions 7, 8, 9 and 10 of the 4th Set of Interrogs. (Weber, J.) 66

Mar. 12—Motion for Reconsideration filed by Pltf. 67

Mar. 20—Conference of Counsel held 3/19/73 before Weber, J. and concluded. (Memo filed) (Rep: None) 68

Mar. 22—Order entered denying Pltf's Motion for Reconsideration of its Memorandum Order of 2/17/73. (Weber, J.) 69

Mar. 26—Motion for Summary Judgment filed by Pltfs .. 70

Mar. 30—Order entered directing plts; submit brief in re motion for summary judgment by 4/30/73; deft. by 5/15/73. (Weber, J.) 71

April 4—Notice of deposition of Mary Kay Reardon on 5/10/73 at 9:00 A.M. filed by deft 72

April 4—Notice of deposition of Alice Welch on 6/5/73 at 9:00 A.M. filed by deft 73

April 4—Notice of deposition of Marilyn A. Huffstutter on 5/8/73 at 9:00 A.M. filed by deft 74

April 4—Notice of deposition of Margaret A. Hans on 5/16/73 at 9:00 A.M. filed by deft 75

April 4—Notice of deposition of Ms. Boydyne M. Ross on 5/1/73 at 9:00 A.M. filed by deft. 76

April 11—Notice of interrogs on pltf filed by deft 77

April 25—Stipulation for extension of time for parties to file briefs and evidentiary material re motion for summary judgment and proposed order filed 78

April 26—Order entered granting extension of time of parties to file briefs in support of Motion for Motion of Summary until 6/15/73; deft file their briefs extended to 7/13/73. (Weber, J.) 78A

May 21—Motion for protective order re sealing of deposition exhibits and proposed order filed by deft 79

May 23—Pltfs Answers to Deft's First set of Interrogs filed. (Nos. 1-2) 80

May 25—Proposed protective order filed .....

June 21—Affidavit of Sandra Wetzel in Support of Pltfs Motion for Summary Judgment filed 81

June 21—Affidavit of Mari Ross in support of Pltf's Motion for Summary Judgment filed 82

June 21—Affidavit of Howard A. Specter in Support of Pltf's Motion for Summary Judgment filed 83

June 25—Motion for an extension of time in which to respond to pltfs' motion for summary judgment and proposed order filed by deft 84

June 27—Motion of the United States Equal Employment Opportunity Commission to file a brief and present oral argument as Amicus Curiae filed 85

June 28—Order entered granting motion of counsel for U. S. Equal Employment Opportunity Commission to file brief and present oral argument as amicus curiae. Name of Local counsel for U. S. Equal Employment Opportunity Comm. shall be noted on docket as party to receive copy of all notices and pleadings in this case. (Weber, J.) 85A

June 28—Order entered setting hearing on Motion for Summary Judgment for 9/24/73 at 9:30 a.m. (Weber, J.) 86

June 29—Protective Order entered 6/28/73 directing that all personnel files being marked as exhibits to the de-

positions of deft's present and past employees and all statements being marked and attached as exhibits be placed in a sealed envelope and filed with the Clerk of the Court and marked (To Be Opened Only as Directed by the Court). (Weber, J.) 87

July 5—Deft's Amended Answers to Pltf's Fifth Set of Interrogs filed 88

July 16—Discovery Deposition of Boydyne Ross with Amendment and exhibits attached thereto filed. (Ex's marked Only to Be Opened by Court Order) 89

July 16—Ex's received from Commerce Reporting Company. (Large envel placed in file) (Marked To Be Opened as Directed by the Court) .....

July 16—Deposition of Mary Kelly filed 90

July 19—Deposition of Diane C. Turnipseed filed 91

July 19—Deposition of Marilyn A. Huffstutter filed 92

July 19—Deposition of Donna Diklich filed 93

July 19—Exhibits to Deposition of Marilyn A. Huffstutter filed. (Placed in Safe—Marked to be opened only as directed by the Court) (2 envelopes) .....

July 19—Exhibits to Deposition of Diane A. Turnipseed filed. (Placed in Safe—Marked to be opened only as directed by the Court) (1 envelope) .....

July 19—Exhibits to Deposition of Donna Diklich filed (Placed in Safe—Marked to be opened only as directed by the Court) (1 envelope) .....

July 23—Deposition of Mary Kay Reardon filed 94

July 23—Exhibits to Deposition of Mary Kay Reardon filed. (Marked, To Be Opened Only as Directed by the Court) (Placed in Safe) .....

July 27—Deposition of Carol Dolaoglu filed 95

July 31—Deposition of Zoanne Salter filed 96

July 31—Deposition of Ethel Smith filed 97

July 31—Exhibits to Deposition of Zoanne Salter filed. Marked "To Be Opened only as directed by Court." 1 envelope. (Placed in safe) .....

July 31—Exhibits to Deposition of Ethel Smith filed. Marked "To Be Opened only as directed by Court." 1 envelope. (Placed in safe) .....

Aug. 17—Notice, motion for amendment of memorandum order on pltfs' motion to determine class action and proposed order filed by pltfs 98

Aug. 27—Order entered fixing hearing on Motion to Modify for 9/24/73 at 9:30 A.M. (Weber, J.) 98A

Aug. 31—Motion of the Chamber of Commerce of the United States for Leave to Participate as Amicus Curiae 99

Sept. 4—Response of Deft to Pltf's Motion to Summary Judgment filed 100

Sept. 4—Certificate of service of Motion of Chamber of Commerce of the U. S. for Leave to Participate as Amicus Curiae and Brief of the Chamber of Commerce of the U. S. in support of the deft filed 101

Sept. 12—Notice rescheduling hearing set for 9/24/73 at 9:30 A.M. to 9/24/73 at 11:00 A.M. before Weber, J filed 102

Sept. 14—Response of Deft to Motion for Amendment of Memorandum Order on Pltf's Motion to Determine Class Action filed 103

Sept. 20—Deposition of Carolyn Ann Pastore filed 104

Sept. 20—Deposition of Carol Rusching Tilley filed 105

Sept. 20—Deposition of Alice Welch filed 106

Sept. 20—Deposition of Lenore King filed 107

Sept. 20—Deposition of Margaret Gail Martin filed 108

Sept. 20—Exhibits to Deposition of M. Gail Martin filed. (Marked To Be Opened Only as Directed by the Court) (Placed in safe) .....

Sept. 20—Exhibits to Deposition of Alice Welch filed. (Marked to be Opened Only as Directed by the Court) (Placed in safe) .....

Sept. 20—Exhibits to Deposition of Carolyn Ann Pastore filed (Marked to be opened only as Directed by the Court) (Placed in safe) .....

Sept. 20—Exhibits to Deposition of Carol Rusching Tilley filed. (Marked to be opened only as directed by the Court) (Placed in safe) .....

Sept. 20—Exhibits to Deposition of Lenore G. King filed. (Marked to be opened only as directed by the Court) (Placed in safe) .....

Oct. 2—Notice fixing arg. on 10/31/73 at 9:30 A.M. before Weber, J. 109

Oct. 29—Deft's Further Amended Answers to Pltf's Interrogs (Fifth Set) filed 110

Oct. 31—Hearing held on Motion for Summary Judgment; Motion to Amendment of Memorandum Order on Pltf's Motion to Determine Class Action; Motion of Chamber of Commerce of U. S. for Leave to Participate as Amicus Curiae before Weber, J. and taken Cav. (Memo filed) (Rep: M. Cutright).... 111

Nov. 1—Affidavit of Sandra Wetzel filed 112

Nov. 16—Order entered fixing Conference of Counsel for 12/3/73 at 1:30 P.M. (Weber, J.) 113

Nov. 20—Letter dated 11/19/73 from Howard A. Specter, Esqr to Kalvin Grove, Esqr filed 114

Dec. 3—Notice, motion for reconsideration and proposed order filed by pltfs. 115

Dec. 3—Notice, motion for an order compelling discovery (production of documents) and proposed order filed by pltfs. 116

Dec. 3—Conference of Counsel held before Weber, J. and taken Cav. (Memo filed) (Rep: M. Cutright) 117

Dec. 4—Plft's Request for Production of Documents (Second Set) filed 118

Dec. 5—Notice, and Motion for Leave to Withdraw Request for Jury Trial with proposed order thereon filed by Pltfs 119

Dec. 5—Order entered Granting Motion to Withdraw Request for Jury Trial. (Weber, J.) .....

Dec. 6—Memorandum Order entered on Pending Matters directing that Order of 8/16/72 be amended; deft to respond to Pltf's motion showing cause by 12/17/73; deft shall produce for inspection any copying by Pltf's counsel all statements taken by the deft. (Weber, J.) 119A

Dec. 14—Notice of taking depositions of Frank L. Farwell 1/7/74 at 10 A.M.; John F. Robinson 1/10/74 at 10 A.M..; Raymond O. Hollis 2/11/74 at 10 A.M.; John P. Larrabee 2/13/74 at 10:00 A.M.; William A. Herrick 2/19/74 10 A.M. filed by pltf. 120

Dec. 17—Response of deft. to motion for an order compelling discovery filed 121

Dec. 17—Motion for reconsideration of that portion of the memorandum order of 12-6-73 pertaining to the production of statements from deft's employees filed by deft. 122

Dec. 19—Notice of service of interrogs to deft (Sixth Set) filed by pltf. 123

Dec. 26—Motion for order that deposition not be taken filed by deft. (deposition of Frank L. Farwell) 124

Dec. 27—Stipulation for extension of time for deft. to respond to pltfs' request for production of documents —second set and proposed order filed 125

Dec. 28—Order entered granting Stip. for Extension of time until 2/4/74 for deft. to respond to pltf's request for production of documents. (Weber, J.) .....

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Jan. 2—Letter dated 12/28/73 from Atty Specter to Judge Weber filed. 126

Jan. 8—Notice of Deposition of John F. Robinson on 1/24/74 at 9:30 A.M. filed by Pltf. 127

Jan. 9—Opinion filed and Order entered; deft found to have violated Civil Rights Act: violations of Title VII found in paragraphs 1, 2, 3 and 4 of Order have ceased as a matter of Company practice and no injunctive relief with respect to these issues is appropriate; the question of liability and appropriate relief for the issues of equal pay for equal work between male and female employees is reserved for further proceedings. (Weber, J.) 128

Jan. 9—Order entered fixing meeting of counsel for 1/24/74 at 3:30 P.M. (Weber, J.) 129

*Jan. 10—Supplement To the Brief of the Chamber of Commerce of the United States of America as Amicus Curiae. In support of the Deft. filed 129

*Jan. 10—Pltf's Brief in Support of Motion for Summary Judgment filed. (Transcript form) .....

*Jan. 10—Brief of the Chamber of Commerce of the United States of America. As Amicus Curiae in Support of the Deft filed 129D

*Jan. 10—Pltf's Reply Brief in Support of Motion of Summary Judgment filed 129E

*Jan. 10—Supplemental Brief of the United States Equal Employment Opportunity Commission as Amicus Curiae filed 129E

*Jan. 10—Brief On Behalf of the United States Equal Employment Opportunity Commission in Support of Pltf's Motion for Summary Judgment filed 129F

NOTE: THE ABOVE BRIEFS MARKED WITH * WERE STAMPED FILED BY JUDGE WEBER'S CLERK. 129G

Jan. 15—Notice, application for injunctive relief and proposed order filed by pltfs. 130

Jan. 17—Stipulation for extension of time for deft. to respond to interrogatories and proposed order filed .. 131

Jan. 17—Order entered extending time for deft to respond to interrogs until 2/20/74. (Weber, M) .....

Jan. 24—Deft's Answers to Pltf's interrogs (Sixth Set) filed. (Nos 1-41) 132

*Jan. 24—Notice of Appeal from Part of Order filed by deft. 133

Jan. 24—Copy of Notice mailed Court of Appeals; letter & copy to counsel and copy of notice given to Judge Weber .....

Jan. 24—$250.00 costs bond posted. (Surety-Fidelity & Deposit Company of Maryland) 133A

Jan. 25—Conference of Counsel held 1/24/74 before Weber, J. and concluded (Memo filed) (Rep: M. Cutright) 134

Jan. 29—Memorandum order entered directing deft. produce requested notes for inspection by court by 2/15/74; discovery stayed except discovery limited to equal pay issue; discovery on liability and damages in equal pay issue ends 4/15/74; pltf's pretrial narrative

due 4/23/74; deft's 4/30/74; parties shall stand ready for trial on the equal pay issue on or after 5/13/74 (Weber, J.) 135

Jan. 30—Copy of notice of service of interrogs. upon plts filed by deft. 136

Jan. 31—Transcript of hearing held 12/3/74 before Weber, J. filed (Rep. M. Cutright) 137

Feb. 1—Motion for reconsideration filed by deft. 138

Feb. 6—Notice. motion to compel answers to interrogatories and proposed order filed by pltfs. 139

Feb. 8—Motion for reconsideration of order allowing the equal pay issue to proceed as a class action filed by deft. 140

Feb. 15—Deft's Response to Pltf's Motion to Compel Answers to Interrogs filed. 141

Feb. 19—Motion filed and Order entered directing that time to file record in Ct. of appeals be extended to 3/18/74 (Weber, J.) 142

Feb. 19—Cert. copy of Motion and Order sent to Ct. of Appeals .....

Feb. 20—Memorandum filed and ORDER entered directing that final judgment be entered in favor of plaintiffs, that def's policy of requiring female employees to return to work within 3 mos. of delivery of child or be terminated is in violation of provisions of Title VII of Civil Rights Act of 1964; that def's policy of denying disability income protection plan benefits to female employees for disabilities related to pregnancies or childbirth are in violation of Title VII & directed that judgment entered for plaintiffs upon these claims of plfs' complaint. (Weber, J.) Motion for Reconsideration is denied. 143

Feb. 20—Pursuant to Memorandum filed and Order entered and Judgment by Decision of the Court filed by the Clerk Judgment is hereby entered accordingly of record. 144

Bernhard Schaffler, Clerk

Feb. 21—Pltfs interrog's to Deft with answers thereon. sixth set (Nos. 3, 4, 5, 6, 11, 21, 22 and 38) filed .. 145

Feb. 26—Original record mailed U. S. Court of Appeals..

IN THE UNITED STATES DISTRICT COURT
For the Western District of Pennsylvania

SANDRA WETZEL and MARI ROSS, on behalf of themselves and all others similarly situated,
Plaintiffs,
vs.
LIBERTY MUTUAL INSURANCE COMPANY, a corporation,
Defendant.

Civil Action No. 72 169
Civil Rights Action

COMPLAINT

1. Jurisdiction of this Court is invoked pursuant to 28 U. S. C. § 1343(4); 42 U. S. C. § 2000e-5(f) and 28 U. S. C. §§ 2201 and 2202. This suit is authorized and instituted pursuant to Title VII of the Act of Congress known as "The Civil Rights Act of 1964," 42 U. S. C. §§ 2000e et seq. The jurisdiction of this Court is invoked to secure protection of and to redress deprivation of rights secured by (a) 42 U. S. C. §§ 2000e et seq., providing for relief against discrimination in employment and (b) 42 U. S. C. § 1981, providing for the equal rights of all persons in every state and territory within the jurisdiction of the United States.

2. Plaintiff, Sandra Wetzel, is an individual residing at 1071 Lindendale Drive, Mt. Lebanon, Pennsylvania 15243.

3. Plaintiff, Mari Ross, is an individual residing at 1308 Pennnsbury Boulevard, Crafton, Pennsylvania 15205.

4. Defendant is a corporation which does business in the Commonwealth of Pennsylvania and the City of Pittsburgh. Defendant is engaged in the business of operating a liability insurance underwriting business. As such, it maintains and

operates offices throughout the United States. One of such offices is located at 717 Liberty Avenue in the City of Pittsburgh, Commonwealth of Pennsylvania.

5. Plaintiffs are female employees of defendant. Plaintiff, Sandra Wetzel, has been employed in the position of claim representative since Juiy, 1967. Plaintiff, Mari Ross, has been employed in the position of claims representative since January, 1970. Prior thereto, she was similarly employed from September, 1967, to April, 1968. At all times relevant hereto, plaintiffs and the other members of their class, have been discriminated against by defendant with respect to compensation, terms, conditions, privileges, and opportunities of employment and have been subject to those illegal acts, practices, and conduct alleged in Paragraph 11 of this Complaint.

6. Defendant is an employer within the meaning of 42 U. S. C. § 2000e-(b) in that it is engaged in an industry affecting commerce and, at all times relevant hereto, has employed at least 100 persons.

7. Plaintiffs bring this action on behalf of themselves and as representatives of a class as defined by Rule 23, Federal Rules of Civil Procedure. The class consists of all women currently employed or who, since July 2, 1965, have been employed by defendant in positions classified by defendant as "claims-technical", including, but not limited to the positions of claims representatives and supervisors. Plaintiffs are unable to state the exact number of the class without discovery of defendant's books and records, but aver on information and belief that the class exceeds two thousand members. The members of the class are so numerous as to make it impracticable to bring them all before the Court. There are liability and damage questions of law and fact common to the class which predominate over any questions affecting individual members only. Defendant has acted and refused to act on grounds generally applicable to the class.

8. The claims of the representative plaintiffs are typical of the claims of the class, and plaintiffs will fairly and adequately protect the interests of the class.

9. The prosecution of separate actions by individual members of the class would create the risk of:

(a) inconsistent or varying adjudications in different jurisdictions with respect to individual members of the class which would establish incompatible standards of conduct for defendant; and

(b) adjudications with respect to individual members of the class which would, as a practical matter, be dispositive of the interests of the members not parties to the adjudications, or substantially impair or impede their ability to protect their interests.

10. The class action is superior to other available methods for the fair and efficient adjudication of the controversy.

11. At all times relevant hereto, defendant has enacted and effected national policies and practices of unlawful and systematic exclusion of and discrimination against women as a class by *inter alia:*

(a) hiring women at lower rank and at lower pay than comparably trained and qualified men;

(b) failing to pay to women the same amount in salary raises as is paid to comparably trained and qualified men;

(c) failing to promote women to higher and better paying positions in the same manner and at the same rate as comparably trained and qualified men;

(d) paying wages to women employees at rates less than the rates at which it pays wages to male employees for equal work in jobs requiring equal skill, effort and responsibilities and which are performed under similar working conditions;

(e) failing to equalize conditions of employment for women as contrasted with comparably trained and qualified men;

(f) failing to make available to women certain positions, including, but not limited to, the positions of field adjuster, claims manager, assistant claims manager, and appraiser;

(g) adopting unreasonable, unwarranted and arbitrary standards and conditions of employment and advancement designed to discriminate in favor of men.

12. By letters of February 15, 1972, plaintiffs were notified, pursuant to Section 1601.25a(c) of Title 29 of the Rules and Regulations of the Equal Employment Opportunity Commission, of their right to institute this action.

Wherefore, plaintiffs pray judgment against defendant and in favor of plaintiffs and each member of their class:

(a) requiring that defendant establish non-discriminatory hiring, payment, opportunity, and promotional plans and programs;

(b) enjoining the continuance by defendant of the illegal acts and practices alleged herein;

(c) requiring that defendant pay over to plaintiffs and to the members of the class the damages sustained by plaintiffs and the members of the class by reason of defendant's illegal acts and practices, including adjusted backpay, with interest, and an additional equal amount as liquidated damages, and exemplary damages;

(d) requiring that defendant pay to plaintiffs and to the members of the class the costs of this suit and a reasonable attorneys' fee, with interest; and

(e) such other and further relief as the Court deems appropriate.

LITMAN LITMAN HARRIS & SPECTER

By /s/ (Illegible)
Attorneys for Plaintiffs

FINE, PERLOW, STONE & COHEN

By /s/ Robert F. Stone
Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT

* * (Caption—72-169) * *

ANSWER TO COMPLAINT

Pursuant to Rule 12(a) of the Federal Rules of Civil Procedure Liberty Mutual Insurance Company answers the Complaint filed against it on February 28, 1972 as follows:

1. It admits the allegations contained in Paragraph 1 of the Complaint.

2. It admits the allegations contained in Paragraph 2 of the Complaint.

3. It admits the allegations contained in Paragraph 3 of the Complaint.

4. It admits the allegations contained in Paragraph 4 of the Complaint.

5. It denies the allegations contained in Paragraph 5 of the Complaint.

6. It admits the allegations contained in Paragraph 6 of the Complaint.

7. It denies the allegations contained in Paragraph 7 of the Complaint and preserves until July 14, 1972 its further Answer pursuant to the order of the Honorable Gerald J. Weber entered in this cause on April 5, 1972.

8. It denies the allegations contained in Paragraph 8 of the Complaint and preserves until July 14, 1972 its further Answer pursuant to the order of the Honorable Gerald J. Weber entered in this cause on April 5, 1972.

9. It denies the allegations contained in Paragraph 9(a) and 9(b) of the Complaint and preserves until July 14, 1972 its further Answer pursuant to the order of the Honorable Gerald J. Weber entered in this cause on April 5, 1972.

10. It denies the allegations contained in Paragraph 10 of the Complaint and preserves until July 14, 1972 its further Answer pursuant to the order of the Honorable Gerald J. Weber entered in this cause on April 5, 1972.

11. It denies the allegations contained in Paragraph 11(a), (b), (c), (d), (e), (f) and (g) of the Complaint.

12. It does not have sufficient knowledge of the allegations contained in Paragraph 12 of the Complaint to admit or deny.

Pleading further, Liberty Mutual Insurance Company alleges as its affirmative defenses:

1. That pay differentials that are authorized under the Equal Pay Act of 1963 (29 U. S. C. Sec. 206(d)) are not a violation of Title VII of the Civil Rights Act of 1964. That under the Equal Pay Act of 1963 employees who are bona fide executive, administrative and professional employees are exempt from the provisions of the Equal Pay Act of 1963 and non-exempt employees cannot be compared to them to determine if a violation of the Act is present. Employees with the title of Division Claims Manager, Assistant Division Claims Manager, Adjuster and Appraiser are exempt under the provisions of 29 U. S. C. Sec. 213 (a)(1). Employees with the title of Claims Representative are not exempt under the provisions of 29 U. S. C. Sec. 213(a)(1).

2. That employees with the title of Claims Representative are performing functions which do not require in their performance the same skill, effort and responsibility as is required by the functions performed by employees with the title of Divisions Claims Manager, Assistant Division Claim Manager, Adjuster and Appraiser.

3. That employees with the title of Division Claims Manager, Assistant Division Claim Manager, Adjuster and Appraiser are performing functions in working conditions that are not similar to those in which employees with the title of Claims Representative are performing their functions.

4. That the amount of compensation paid to employees is based upon factors other than sex, including but not limited to skill, effort, responsibility and working conditions.

Wherefore, Liberty Mutual Insurance Company prays that because the Complaint fails to state a claim upon which relief can be granted, that said Complaint be dismissed.

Respectfully submitted,

LIBERTY MUTUAL INSURANCE COMPANY
By /s/ KALVIN M. GROVE
Kalvin M. Grove
LEDERER, FOX AND GROVE
111 West Washington Street
Chicago, Illinois 60602
312-641-0200

ROBERT A. PENNEY
175 Berkeley Street
Boston, Massachusetts 02116

CLEM R. KYLE
1305 Clark Building
Pittsburgh, Pennsylvania 15222

Dated: April 18, 1972.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing Answer to Complaint was served by first class mail upon

Howard A. Spector
Litman, Litman, Harris and Spector
1320 Grant Building
Pittsburgh, Pennsylvania 15219

on April 18, 1972.

/s/ Illegible

Commonwealth of Pennsylvania
GOVERNOR'S OFFICE
HUMAN RELATIONS COMMISSION
Room 810—4 Smithfield Street
Pittsburgh, Pa. 15222
Tel: (412) 565-5395

July 1, 1971

Liberty Mutual Insurance Companies
717 Liberty Avenue
Pittsburgh, Pennsylvania 15222

Re: Docket E-4256
Wetzel and Ross vs.
Liberty Mutual Insurance Co.

Gentlemen:

This is to inform you that we have had a complaint filed with our agency by the above individuals. A copy of the complaint is enclosed for your review.

To expedite matters, we would like you to complete this interrogatory and return it to this office within fitfeen (15) days.

After we receive this form, an investigator from this office will be assigned to meet with you to gather facts pertinent to this case.

Your cooperation will be appreciated.

Sincerely yours,

/s/ SAMUEL J. KUBRICK
Samuel J. Kubrick
Compliance Specialist

SJK:gg
Enc.

Commonwealth of Pennsylvania
GOVERNOR'S OFFICE
PENNSYLVANIA HUMAN RELATIONS COMMISSION

SANDRA WETZEL and MARI ROSS
(Complainant)

vs.

LIBERTY MUTUAL INSURANCE COMPANIES
(Respondent)

Docket No. E-4256

COMPLAINT

☒ Employment ☐ Housing ☐ Public Accommodations ☐ Education . . . Because of the ☐ Race, ☐ Color, ☐ Religious Creed, ☐ National Origin, ☐ Ancestry, ☐ Age, or ☒ Sex, of the complainant.

1. The Complainant here is Sandra Wetzel; One Dorchester Drive; Apartment 208; Pittsburgh, Pennsylvania 15241, and Mari Ross; 1308 Pennsbury Boulevard South; Pittsburgh, Pennsylvania 15205.

2. The Respondent herein is Liberty Mutual Insurance Companies; 717 Liberty Avenue; Pittsburgh, Pennsylvania 15222.

3. The Complainant alleges that the respondent maintains sex segregated job classifications and by so doing, limits female employees as a class to lower paying job classifications, and limits their opportunities for promotions and salary increments. The complainants further allege that female applicants, as a condition of hire, are subjected to inquiries about anticipated marriage and family size, while men are not similarly evaluated as a condition of hire.

4. The Complainant alleges that the alleged unlawful discriminatory practice:

☐ took place on or about _____.

☒ is of a continuing nature which has persisted up to and including the present time.

5. No other action based on these allegations has been instituted by the Complainant in any Court or before any other Commission within the Commonwealth of Pennsylvania except as follows:

☐ None

☐ _____

6. Such action complained of is a violation of:

☒ Section 5(a) of the Pennsylvania Human Relations Act, Act of October 27, 1955, P. L. 744, as amended by the Act of February 28, 1961, P. L. 47 and as further amended by the Act of July 9, 1969, P. L. 133.

☐ Section _____ of the Pennsylvania Fair Educational Opportunities Act (Act of July 17, 1961, P. L. 776).

/s/ SANDRA WITZEL
(Signature of Complainant)
Date: 5-11-71

/s/ MARI ROSS
(Signature of Complainant)
Date: 5-11-71

Sworn to and subscribed before me this 11th day of May, 1971.

/s/ HELEN M. SNYDER
Notary Public

My Commission expires

IN THE UNITED STATES DISTRICT COURT

* * (Caption—72-169) * *

DEPOSITION OF KENNETH SPAULDING

TUESDAY, OCTOBER 17, 1972

The deposition of Kenneth Spaulding, witness herein, called by the plaintiffs for examination under the Federal Rules of Civil Procedure, taken before me, the undersigned, Dorothy Johnson, a Notary Public in and for the Commonwealth of Pennsylvania, pursuant to notice, at the offices of Litman, Litman, Harris & Specter, 1320 Grant Building, Pittsburgh, Pennsylvania, commencing at 10:30 o'clock a.m., the day and date above set forth.

[2] Appearances:

On behalf of the plaintiffs: Litman, Litman, Harris & Specter: Howard A. Specter, Esquire, 1320 Grant Building, Pittsburgh, Pennsylvania 15219

On behalf of the defendant: Kalvin M. Grove, Esquire, Chicago Title & Trust Building, 111 West Washington Street, Chicago, Illinois 60602

Robert A Penney, Esquire, Corporation Counsel.

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Witness: Page

Kenneth Spaulding

Examination by Mr. Specter 3, 84
Examination by Mr. Grove 83

Witness directed not to answer on Pages 17, 53, 68, 73, 74 and 84. Request for production of documents on Page 37.

[3] PROCEEDINGS

KENNETH SPAULDING witness herein, called by the plaintiffs for examination under the Federal Rules of Civil Procedure, having been first duly sworn, as hereinafter certified, was examined and testified as follows:

Examination By Mr. Specter:

Q. State your full name, please.
A. Kenneth D. as in David, Spaulding.
Q. Where do you live?
A. 20 Jeffrey Road, Wayland, Massachusetts.
Q. Have you ever testified before?
A. No.
Q. How long have you lived at that address?
A. Since 1960.
Q. With whom do you live there?
A. My wife.
Q. How old are you?
A. 60.
Q. What is your educational background?
A. I graduated from the University of Vermont in June of [4] 1934.
Q. In what field did you receive a degree?
A. I have a Bachelor of Science degree in Economics.
Q. Have you had any postgraduate training or studies in the field of economics since that time?
A. No, sir.
Q. Are you presently employed?
A. Yes, sir I am.
Q. By whom?
A. Liberty Mutual Insurance Company.
Q. In what capacity?
A. Manager, personnel services.

Q. Who is your immediate superior?

A. Melvin B. Bradshaw.

Q. What is his title?

A. Executive vice president.

Q. How long have you been employed by Liberty Mutual Insurance Company?

A. Since June 19th, 1934.

Q. Is that the first full-time employment you had after being graduated from college?

A. Yes, it is.

Q. Would you recite for me, the history of your employment [5] with Liberty Mutual, tell me what positions you held and where you held them and during what periods of time you held them?

You have heard this before, so you know what I want.

A. Claims training class, from June 19th until approximately the 1st of August. Then I was transferred—

Mr. Grove: What year?

The Witness: 1934, I am sorry.

A. Then I was transferred to Philadelphia and I was there until approximately April 1, 1937 as a claims adjuster and I was transferred back to Boston and I worked as a claims adjuster from that date until about September, 1937 when I became a supervisor in the Boston Claims Department.

I remained there until 1944 when I went to the home office as a home office claims examiner. I was there two years, approximately two years and a half.

Then I returned in the spring of 1946, I believe, to the Boston Claims then as the chief adjuster, the same job that is now known as assistant claims manager.

I became claims manager in the Boston Claims Office in 1949 until I was transferred to New York as administrative assistant in the New York Division and I remained there until April 1st, 1960 when I was transferred to the home office again in Boston as manager of personnel services.

[6] Q. And you have been manager of personnel services since April of 1960?

A. Correct.

Q. Is there a written job description for your job?

A. Apparently not. I thought there was but I couldn't find one.

Q. Why did you think there was?

A. Because I thought at the time of my transfer, there was an organizational bulletin put out that I was moving from New York to Boston and I thought there was something in there about it but that is not so.

Q. Would you tell me what duties and functions you performed as manager of personnel services?

A. Well, perhaps, I could start with telling you of the people who report to me, what they do.

Q. Okay.

A. One person reporting to me is director of company safety, safety director for the company. Another one is coordinator of benefit plans and he handles all of our benefit plans at the claim level.

Another one is director of supervisory training, responsible for the training of all of our nontechnical supervisory personnel. [7] In addition to that, I work with the various departments in those areas that are common to the company, if you will, rather than as departmental problems and affairs.

Q. Would you tell me what you do now?

A. I pursue those things I have just mentioned plus having some involvement with matters like the one now pending.

Q. Are you involved in all litigation in which the company is named party?

A. Yes, in this area, in the area of employee relations, not in the court area.

Q. Who is the company safety director?

A. Charles Butters.

Q. What does he do?

A. Well, in addition to being director of safety, he is also —oh, I forgot one person I must get back to—he also handles the interviewing of people who come into our home office in Boston looking for a job in the technical area who have not been recruited but just as we call it, wander in because we have a fair size building and we are in a relatively small city and they have heard of Liberty Mutual and they come in and he interviews them and he does that in connection with his job.

Also as director of safety, he is interested in such [8] things as safety of our people and the working condition of our people in the offices scattered throughout the country.

One person I forgot, James Brannon who is coordinator of equal employment.

Q. Who is the coordinator of benefit plans?

A. Paul Gately.

Q. What does he do?

A. Responsible for handling our comprehensive medical and income protection claims at the claims level.

Q. By that you mean claims being made on behalf of employees?

A. Well, yes, you know, their claims.

Q. As opposed to claims against the company from outside?

A. Yes. He has nothing to do with that.

Q. Does Mr. Gately report directly to you?

A. Yes, he does.

Q. Who is the director of supervisory training?

A. Norma M. Rodsater.

Q. What does she do?

A. Well, she is responsible through a group of people that we call training supervisors, there are some 38, 39 of them located in each of our divisions, for the most part assigned to the division offices and their function is to [9] travel and visit and inspect the offices within the division or within their area of command, to determine that we are providing our

technical staffs with the quality and quantity of clerical support that they need in order to get their work done.

Q. You mentioned your technical staff and the necessity of providing them with clerical support. What distinction does there exist in Liberty Mutual between jobs classified as technical and jobs classified as clerical?

A. Like most companies, we break our pay roll out as such into two broad classifications, clerical and technical. We chose that as opposed to some other designation.

Q. Is it your testimony that most large companies use those classifications?

A. Using some sort of classification rather than having a single pay roll. At least this is my experience. We think of the clerical people as those who have functions that they could do their work for anybody, not necessarily just limited to an insurance company, they would be a secretary in a law firm, in a department store. They are concerned with those areas that are peculiar to and are in pursuit to the insurance company, that is technical.

Q. You have rehabilitation nurses on your pay roll, do [10] you not?

A. No, I do not.

Q. Liberty Mutual does not—

A. Oh, I thought you meant on my pay roll in my department.

Q. No, with the company.

A. Yes.

Q. Are they classified as technical or clerical?

A. Technical.

Q. What do they do?

A. You would have to ask somebody in the claims department.

Q. You don't know what they do at all?

A. Well, in a very broad sense of the word, I know they are concerned with mostly seriously injured Workmen's Com-

pensation claimants but I don't know exactly what their duties are. I would have no occasion to know.

Q. What does Mr. Brannon do?

A. Mr. Brannon is a black man that is engaged in the recruiting of minority employees, devotes most of his time to recruitment at the campus level and various black organizations across the country such as the NAACP, Urban League and other agencies with which he is familiar and with whom he has contact.

[11] Q. Is there some reason that you pointed out the fact that Mr. Brannon is black?

A. Well, only because I thought you might be misled as to his name. That is a good Irish name.

Q. From what minority groups does he recruit employees?

A. Primarily black.

Q. What others?

A. Oh, Spanish surname.

Q. Any others?

A. I would not think so. Black men and women, Spanish surname men and women.

Q. Pardon?

A. The black—

Q. No. The last comment you made.

A. Black male and females and male and female Spanish surname.

Q. How long has he had that position?

A. On a full-time basis, I would think about 18 months.

Q. How about on a part-time basis?

A. Oh, about two or three years.

Q. What else did he do?

A. He was an underwriter.

Q. How long has he held the position of coordinator of [12] equal employment?

A. About a year and a half.

Q. What was his title before that?

A. Underwriter.

Q. Who was the coordinator of equal employment before him?

A. We didn't have one.

Q. Can you tell me with any precision, when that position was created?

A. No, I can't. The date, I would guess would be April, 1971.

Q. Are you able to tell me whether it was before or after Mrs. Ross and Mrs. Wetzel filed their charges with the Pennsylvania Human Relations Commission?

A. I can't be certain.

Q. Are you able to tell me whether it was before or after the New York City Commission began its investigation of employment practices?

A. No, I can't.

Q. Can you tell me whether it was before or after the Massachusetts Commission began its investigation?

A. No, I can't.

Q. Now, I have been told by numerous people including Mr. Grove, that you would be able to tell me the company's [13] maternity leave policies as they presently exist and as they have existed in the past.

Are you able to tell me the company's present policy with respect to maternity leave?

A. Yes.

Q. Please tell me.

A. Well, if a female employee has been employed with us one year and makes a written request for leave for pregnancy and her doctor verifies the fact that she is able to work and is pregnant and so forth, she is entitled to a leave of absence.

Q. For how long?

A. Leave of absence is six months from the date of termination or three months from the date of delivery, whichever comes first.

Q. And are those firm deadlines?

A. Yes.

Q. Is that without regard to whether there are any complications arising which for health reasons, preclude the employee from returning within that period of time?

A. Yes.

Q. Does the employee continue to accumulate benefits or seniority during the leave of absence?

[14] A. No.

Q. Are there any benefits or waiting periods or seniority points as it were, that are suspended during that period of absence?

A. When she returns from a leave, there is no three months waiting period as being employed at the beginning.

Also, she is returned to the same job or one comparable job. We don't think of it in terms of seniority.

Q. Is this leave of absence available only to female employees who have been with the company for a year or more?

A. That's correct.

Q. When was the present policy adopted?

A. Well, September, 1970, with a modification in November of 1971.

Q. What month in 1971?

A. September. I mean November of 1971. There was a modification in November of 1971.

Q. Tell me what the November, 1971 modification was.

A. Permitted to work through the ninth month or as long as the doctor said health-wise, she could.

Q. Prior to 1971, how long were your female employees permitted to work?

A. Through the eighth month.

[15] Q. How long had that been the policy?

A. Since 1967.

Q. September?

A. March.

Q. What was the policy prior to March of 1967?

A. Through the sixth month.

Q. How long was that the policy?

A. I can only go back to 1948. I could find no records earlier than that.

Q. Is it your testimony that the policy was the same from 1948 through March of 1967 or up until March of 1967?

A. That's correct.

Q. Now, was it always the policy that the employee received leave of absence during her absence from employment due to pregnancy?

A. No.

Q. When did that become a policy?

A. March, 1967.

Q. What was the policy prior to that?

A. Termination with re-employment if they returned to work with a waiving of the waiting period as far as benefit plans are concerned. They had to return for that privilege within six months.

[16] Q. Were they guaranteed re-employment?

A. No.

Q. Under what circumstances were they re-employed?

A. Well, if we had an opening when they applied for re-employment, we would take them back.

Q. At what point in time were they required to terminate their employment?

A. At that time, prior to 1967?

Q. Yes.

A. Six months or earlier if the doctor indicated.

Q. Were there any company-approved exceptions to that rule?

A. Not to my knowledge.

Q. Is the policy with respect to leaves of absence, has that been the same since March of 1967?

A. I'm sorry.

Q. Since March of 1967, has it been the policy of the company to give leaves of absence to pregnant employees?

A. Yes.

Q. And has the time period for returning been the same since that time?

A. Yes.

Q. So the only variable since March of 1967 is the period [17] during which the employee was permitted to work?

A. Yes.

Q. Tell me why the policy was changed in March of 1967.

A. On the advice of counsel.

Q. What counsel?

A. Home office.

Q. Who?

A. Mr. Penney.

Q. Can you tell me what advice you were given?

Mr. Grove: Don't answer the question.

Mr. Specter: State your reason.

Mr. Grove: Attorney-client privilege between Mr. Penney and Mr. Spaulding and between Mr. Penney and his client, the company.

Q. Why was the policy changed in September of 1970?

A. On advice of counsel.

Q. Same counsel?

A. Yes.

Q. Why was it modified in November of 1971?

A. On advice of counsel.

Q. Same counsel?

A. Yes.

Mr. Specter: Same objection if I pursue [18] it?

Mr. Grove: Same objection if you ask the same question.

Q. Are you familiar with the company's group life insurance program?

A. Yes.

Q. You were present at the deposition of Mr. Carr which was taken in this case, were you not?

A. Yes.

Q. In fact, you have been present at all of the depositions that have been taken so far?

A. Yes.

Q. You should have been a lawyer or you will by the time we finish.

I would like to show you what was marked at Mr. Carr's deposition as Carr Deposition 8A through G. On the first page, the one marked Carr Deposition Exhibit A, there is a statement that a change in the company's group life insurance program of the extension of the technical men's schedule to all technical personnel.

A. Yes.

Q. Can you tell me what that refers to?

A. Well, prior to January 1, 1967, our group life [19] insurance program contained three schedules. The basic schedule, technical men's schedule and a senior schedule.

The basic schedule is paid for entirely by the company. At the end of three months of employment, each and every employee received $1,000 worth of life insurance under the basic schedule.

At the same time, technical men which subscribed to the technical men's schedule received $2,000 of insurance on each of the succeeding ten anniversaries which they paid for entirely, so at the end of ten years and three months of employment, they would have a total of $25,000 in coverage, $22,000 under the technical men's schedule and $3,000 under the basic because the basic was increased to $3,000 in increments of $1,000 on each of the succeeding anniversaries after three months of employment.

Now, the senior schedule which is available to all employees requires ten years and three months of employment and everyone is eligible for it and this provides another $25,000 of insurance based upon salary ranges. Again, paid for entirely by the participants.

Q. So the there schedules are the basic schedule, technical men's schedule and the senior schedule?

A. Right.

[20] Q. And the latter two were paid for entirely by the participants?

A. Correct.

Q. Prior to January 1, 1967, was the technical men's schedule available to female employees?

A. No.

Q. Why?

A. Because it was a technical men's schedule.

Q. Can you tell me why it was limited to men?

A. Yes.

Q. Please tell me.

A. In Mass., in order to have a group life insurance plan, it is necessary that 75 per cent of the eligible people subscribe to the plan. At the time this plan was introduced in 1953, it was determined that we could not get 75 per cent participation if the schedule was made available to females, technical females.

Q. How was that determined?

A. I don't know.

Q. Who made the determination?

A. I don't know.

Q. Do you know whether any studies were done?

A. I don't.

[21] Q. Do you know whether anyone was asked?

A. I don't.

Q. Do you know if any technical female personnel were asked whether they would participate if invited?

A. I don't.

Q. Can you tell me why the policy was changed in January of 1967?

A. Advice of counsel.

Q. Same counsel?

A. Yes.

Mr. Specter: Same instruction?

Mr. Grove: Same instruction.

Q. In January of 1967, was there still a requirement that to have a group life insurance plan in Massachusetts, you had to have a 75 per cent enrollment?

A. Yes.

Q. And did you meet that requirement?

A. Yes.

Q. Have you met it ever since January 1st, 1967?

A. I don't know.

Q. Are you aware of any period during which you did not meet it?

A. No.

[22] Q. Is the requirement that there be an initial enrollment of 75 per cent or that a 75 per cent figure be maintained throughout the existence of the group?

A. I don't know.

Q. Are you able to tell me what percentage of your technical female employees participate in what we have been referring to as the technical men's schedule?

A. I cannot.

Q. Can you tell me who would be able to?

A. I don't know of anybody that would be able to tell you without—no, I don't, I don't know anybody.

Q. Are you aware of any way we could ascertain that information through a review of your records or otherwise?

A. I think so.

Q. Can you tell me how we could do it?

A. I honestly don't know. I know a couple of things I might check and that would be to see if the computer would spew it out.

Q. What else might you check?

A. I don't know. I would start there.

Q. Tell me, how do the employees make their payments, is it by pay-roll deduction?

A. Yes.

[23] Q. Who is the carrier for that group life program?

A. Liberty Life Assurance Company of Boston.

(Thereupon discussion held off the record.)

Q. So payments are made by pay-roll deduction?

A. Right.

Q. I take it you pay your employees by check?

A. Yes.

Q. Are they prepared by computer?

A. Yes, that is why I would start there.

Q. Is the pay-roll check accompanied by a check stub or a voucher of any kind?

A. Yes.

Q. What is it accompanied by?

A. I beg your pardon?

Q. What is it accompanied by, is it a stub?

A. No, it is the same size as the check, it lists all deductions.

Q. Does it list either by title or some code reference, the position held by the employee?

A. No.

Q. How about the department in which the employee works?

A. It must but I don't know. I think it must.

Q. It would certainly—

[24] A. I think it does.

Q. Okay. Is that schedule still called the technical men's schedule?

A. No. Technical employees' schedule.

Q. When was that changed?

A. 1-1-67.

Q. What annual salary must an employee be paid at the present time to be eligible for the senior schedule?

A. The same as before, the—oh, at the moment, right now?

Q. Yes.

A. We have abolished those two schedules, technical employees' schedule and senior schedule. They are no longer in existence.

Q. Technical employees' is no longer in existence?

A. Right.

Q. When was that abolished?

A. September, 1971.

Q. Why?

A. Because we changed our plan to a multiple of salary.

Q. Is that the same reason that the senior schedule was abolished?

A. Yes.

[25] Q. What salary range did one have to reach to be eligible for the senior schedule just prior to the time it was abolished in September of 1971?

A. I believe the minimum was $4,000. It went up in different steps to a maximum of 20.

Q. Is it your testimony then that the amount of coverage available under the senior schedule depended upon the salary of the particular employee?

A. That's correct. After ten years and three months of employment.

Q. How long prior to September, 1971, did you have that basic life insurance program in effect?

A. Do you mean with the basic schedule?

Q. With the three schedules.

A. The technical employees' schedule—

Q. All of them.

A. Since July 3rd, 1953 or July 1. I think it is the 3rd.

Q. How was your group life program changed in September of 1971?

A. Changed to a multiple of salary.

Q. Explain how that works.

A. Two-and-a-half times salary, rounded to the nearest thousand dollars, maximum of $150,000 in coverage, not salary.

[26] Q. Who pays for that coverage?

A. The company and the employee.

Q. Who pays how much?

A. Company pays 60 per cent and the employee pays 40 per cent. The company still pays for the first $3,000 of coverage in full.

Q. Does Liberty Mutual have a mandatory retirement age?

A. Yes.

Q. What is it?

A. 65.

Q. Does that apply to all employees?

A. Yes.

Q. Has that always been the case?

A. Since 1934. I don't know what it was prior to that.

Q. Does Liberty Mutual have an income protection plan?

A. Yes.

Q. Would you describe it for me?

A. Those people who have been with us less than five years and more than three months for disability extending beyond the eighth day, calendar day, disabled employee will receive income protection benefits under an insured plan for 103 weeks. The first week of that disability is paid for in full by the company.

[27] The insured benefit is two-thirds of salary to a maximum of $150 a week.

Salary supplement that pays half the difference for as many weeks as years of completed service.

But people who have been with over five years, they receive two-thirds of their salary to a maximum of $275 a week.

To age 65, same salary supplement paying one-half of the difference between the insured amount and full salary for as many weeks as years of completed service.

There are offsets on the both of these plans, Social Security benefits or Workmen's Comp. benefits.

Q. Does the income protection plan cover disability related to pregnancy?

A. No.

Q. Are there any other disabilities that it doesn't cover?

A. Any disability that is not established by medical evidence.

Q. Any other?

A. I can't think of any.

Q. Can you tell me why it doesn't apply to pregnancy?

A. On advice of counsel.

Q. Same counsel?

[28] A. Same counsel.

Mr. Grove: Same objection.

Q. In computing the waiting period of five years and three months that you referred to earlier, do you include periods of leaves of absence due to pregnancy?

A. May I ask you a question?

Q. Yes.

A. Are you talking about—income protection plan, is this what you are referring to?

Q. That is a five-year waiting period, is it?

A. No. We have three year income protection plan if you have been with us more than three months and less than five years.

And the long-term disability which can run from maybe age 30 to 65, would begin after five years of employment.

Q. In computing the five years of employment, do you include periods during which a female employee is absent due to pregnancy?

A. If she is on a pregnancy leave of absence, yes.

Q. How long has that been your policy?

A. Since we established the pregnancy leave.

Q. I take it that when your policy was to require a pregnant female to terminate her employment, you did not [29] include in your computation of waiting periods, any time between the date of termination and the date of re-employment if the employee was—

A. They start that when they are re-employed except we waive the three-month waiting period.

Q. If I understand you correctly, if you had a female employee who was in your employ for ten years, she became pregnant, she would have been required to terminate her employment?

A. Correct.

Q. Then if she reapplied for employment and there was a position available and she was rehired, she would have lost whatever time had accrued under your income protection plan?

A. That's correct.

Q. Are you aware of any areas of employee benefits offered by Liberty Mutual where the benefits afforded to male employees are not the same as those afforded to female employees?

A. I am not.

(Thereupon discussion held off the record.)

Q. Are you aware of the policy of Liberty Mutual Insurance Company not to hire as claims adjusters or claims representatives, persons who had similar experience with other [30] insurance companies?

A. I heard it, I have heard of that.

Q. Where did you hear that?

A. Well, I don't know. Maybe it was one of these depositions.

Q. If I were to tell you that Mr. Grove made the statement at Mr. Raymond's deposition, would that ring a bell?

A. It wouldn't surprise me if that is where I heard it but I am sure I heard it before that. I don't know when or where.

Q. With the exception of claims representative and claims adjuster, are you aware of any other positions for which Liberty Mutual Insurance Company does not hire persons who have had similar experience with other insurance companies?

A. No.

Q. Does Liberty Mutual Insurance Company have a form of employment application which it uses throughout the country?

A. No.

Q. Did it ever?

A. Not to my knowledge.

Q. Do you know whether Liberty Mutual Insurance Company maintains records of the time worked by its employees for which it pays overtime?

[31] A. Yes.

Q. Where are those records maintained?

A. They eventually find their way to the division office where they are maintained by the administrative manager of each division. I don't know how long they are kept in each local office.

Q. Are there also records maintained at the home office?

A. For home office employees, yes, by the administrative manager in the home office.

Q. Tell me what form the records of overtime take.

A. It is a time slip, we call it a record of time slip. I believe we call it that.

Q. Under what circumstances is that slip completed?

A. By or for all nonexempt people.

Q. But when is it completed? Is it only completed when they work overtime? Is one completed every pay period?

A. Every pay period.

Q. Without regard to whether overtime is worked?

A. Correct.

Q. That is for all employees who are not exempt?

A. Yes.

Q. Everywhere in the country?

A. That is my understanding.

[32] Q. So then if a nonexempt employee works no overtime, a time record slip is prepared reflecting that fact?

A. No. I think in that instance, I could be wrong, but I believe in that instance it is prepared by the supervisor who records no overtime for the unit, lists the names and signs them. I believe this is done in some offices or some jurisdictions because there are some State laws superimposed upon the Federal

Wage and Hour Law that requires us to keep the forms in a little different fashion.

Q. Do you know how it is done here in Pittsburgh?

A. No.

Q. Can you tell me for which positions in the technical area of the claims department these time record slips are prepared?

A. Well, for nonexempt people.

Q. Tell me which ones they are.

A. All the clerical people—

Q. I am talking about the technical people only.

A. Oh. CR's.

Q. Which others?

A. Adjusters during the training period up until such time as they become exempt.

Q. Any others?

[33] A. Not to my knowledge. There could be but I don't know of any.

Q. Then to the best of your knowledge, Liberty Mutual treats only claims representatives and adjuster trainees as non-exempt technical personnel?

A. That's correct.

Q. When does a claim adjuster become exempt?

A. Whenever the department exempts them. I don't know when that is.

Q. Who would know?

A. Mr. Carr would know.

Q. Okay.

A. He prepares the exemption card or someone on his staff.

Q. Do you know what criteria are applied in determining when an adjuster becomes exempt?

A. I assume when he is finished his training, sometime beyond that.

Q. At least there is some period of time during which adjusters are not considered as exempt employees by Liberty Mutual Insurance Company?

A. That's correct.

Q. That is at least during the training period?

A. That's correct.

[34] Q. Which is a minimum of a six-week program?

A. I believe a minimum of six.

Q. Have you been told whether salary is one of the criteria that is applied in determining whether an adjuster is treated as exempt by Liberty Mutual Insurance Company?

A. No more than any other job where salary would be a criteria, under the Wage and Hour Law.

Q. I am asking you whether you have been told whether it is considered at all.

A. No, I don't think so. You mean as the definite criteria?

Q. No, one of the criteria.

A. Oh, sure.

Q. You have been told that?

A. Yes.

Q. Are you aware that it is one of the criteria?

A. Yes.

Q. Is it your understanding that until a claim adjuster reaches a certain salary level, he is not treated as an exempt employee by Liberty Mutual Insurance Company?

A. He would have to qualify salary-wise.

Q. So adjusters who do not qualify are not, salary-wise that is, they are not considered exempt employees by Liberty [35] Mutual?

A. I would assume so.

Q. Is that your understanding?

A. Yes, if they don't meet the salary qualification.

Q. Have you been told that by anyone?

A. Pardon?

Q. Have you been told that by anyone?

A. Not in that context.

Q. Okay. Are any of the clerical employees considered or treated as exempt employees by Liberty Mutual Insurance Company?

A. No.

Q. Are you familiar with the form which has been used by Liberty Mutual Insurance Company which is numbered PERS, for personnel, I assume, 195-R5.

A. Not by number.

Q. Are you familiar with the exemption form, a copy of which was marked at Mr. Penney's deposition?

A. The green card?

Q. Right.

A. Yes.

Q. Just so the record is clear, I'll show you what was marked as Penney Deposition Exhibit No. 1 and ask you to tell [36] me if that is a copy of the green card you have referred to.

A. Yes.

Q. How long has that card been used by Liberty Mutual Insurance Company?

A. I have no idea.

Q. How long, to your knowledge, has it been in use, when is the first time you became aware of its use?

A. I don't know.

Q. Is it still in use?

A. Yes.

Q. Are you familiar with the Personnel Policies and Procedures Manual referred to on the green exemption card?

A. Yes.

Q. Can you tell me the names of those persons who have a copy of them?

A. No.

Q. Would Mr. Raymond have one?

A. I don't know.

Q. Can you tell me whether that would be a manual that Mr. Raymond referred to at his deposition?

A. I don't remember, unless you can read me what he said.

Q. Page 40, the question was asked, I'll show this to Mr. Grove—to your knowledge, Mr. Raymond, does Liberty [37]

Mutual have any manual describing Liberty Mutual's personnel policies and then there is an objection and some conversation between Messrs. Brown and Grove and the response is, yes, there is a manual, personnel manual applying to all departments.

A. That is what he was referring to.

Mr. Specter: Mr. Grove, do you have any objection to producing that when you produce Mr. Raymond?

Mr. Grove: Not if he has it.

Mr. Specter: As of April 5, 1972, he had it.

Mr. Grove: He said there was one in the office, he didn't say he had it.

Mr. Specter: Will you produce it if it is in the Pittsburgh office?

Mr. Grove: If he is available.

(Thereupon discussion held off the record.)

Q. You don't have a copy with you?

A. I do not, no.

Q. You do have a copy of the manual, however, I take it?

A. Oh, yes.

Q. Are those manuals supplemented from time to time?

A. Yes.

[38] Q. Are they loose-leaf?

A. Well, it is in a Acco base binder.

Q. I would like you to look at what was marked at Mr. Phillips' deposition as Phillips' Deposition Exhibit No. 1, please take your time and read that.

A. Yes.

Q. Can you identify it for me?

A. Yes, I wrote it.

Q. That doesn't identify it.

A. Memorandum addressed to the administrative managers and the subject is Federal Wage and Hour Law-Payment of Overtime, dated March 30th, 1970.

Q. Do you remember writing it?

A. No. I remember I wrote it, though.

Q. Do you remember the circumstances under which you wrote it?

A. No.

Q. Are you familiar with the policy described in the memorandum?

A. Yes.

Q. Incidentally, are supervising claims representatives treated as exempt employees by Liberty Mutual Insurance Company?

[39] Your memo indicates as of March 30th, 1970, supervising claims representatives and claims representatives supervisor were treated as exempt employees.

A. Yes.

Q. That is two-and-a-half years ago?

A. Yes. Oh, you mean presently, currently?

Q. Yes.

A. Yes, as far as I know.

Q. Now, were you aware as of the date of your memorandum, that—strike.

Tell me what efforts were made by Liberty Mutual Insurance Company to advise claims representatives who had been treated as exempt employees prior to March 15th, 1970, that after that date, they would be entitled to overtime pay for any overtime worked.

A. I don't know.

Q. Do you know whether there were any?

A. I do not.

Q. Who would know?

A. Mr. Carr, some member of his staff.

Q. Do you know why the position was changed to an exempt position in March of 1970?

A. Yes.

[40] Q. Tell me why.

A. Advice of counsel.

Q. Did you discuss that matter with counsel?

A. I think I probably did. I have no recollection of such a conversation but I think I probably did.

Q. How do you know it was on advice of counsel?

A. Responsibility of counsel to determine which jobs are classified as exempt and nonexempt.

Q. Do you have personal knowledge of that?

A. Yes.

Q. Who advised you that the position should be declassified?

A. Counsel.

Q. To what department, if any, is counsel attached?

A. Home office legal department.

Q. In March of 1970, was counsel attached to the home office claims department?

A. No.

Q. Now, your memorandum states that the home office claims department has informed us, et cetera. Can you tell me who in the home office claims department, if anyone, you were referring to?

A. Either Mr. Carr or Mr. Phillips, I don't remember [41] which.

Q. Can you tell me what either or both of those gentlemen told you about the declassification?

A. Not beyond what is in the memorandum.

Q. Were you present at that part of Mr. Carr's deposition when he testified that around August of 1971, there was a decision made to actively recruit claims representatives as claims adjusters?

A. Yes.

Q. Now, were you familiar with that decision prior to the time that you heard Mr. Carr testify about it?

A. I knew of it.

Q. Pardon.

A. I knew of it, yes.

Q. When did you first learn of it?

A. I would guess about the time the decision was made.

Q. Do you recall learning of it?

A. Not as a specific event.

Q. What was the first thing you heard about it?

A. I don't remember.

Q. Who was the first person to tell you about it?

A. I don't remember.

Q. What is the first recollection that you do have [42] concerning that subject?

A. I guess a discussion involving Mr. Carr and Mr. Phillips. I don't remember when or where, whether in Mr. Carr's office or my office.

Q. But you do recall it was in Boston at the company's office?

A. Yes.

Q. Can you tell me whether it was prior to September of 1971?

A. I think so.

Q. Okay. Can you tell me whether it was before the final decision to actively recruit claims representatives was made?

A. No.

Q. No, you can't tell me or no, it wasn't it?

A. I don't know.

Q. Were you consulted in any way concerning that decision, was your advice solicited?

A. No.

Q. No one asked your opinion about it?

A. No.

Q. Do you know whether it was before or after Mrs. Wetzel and Mrs. Ross were offered the position of claims adjuster?

[43] A. My memory is that it was before but I can't be sure.

Q. Would you tell me everything you recall about that discussion?

A. The recollection that I have at the moment is that it would be determined we would offer qualified CR's to become reclassified as claims adjusters.

(Thereupon the record was read.)

Q. Have you heard your answer read back?

A. Yes.

Q. Now I take it from that that the decision to offer the reclassification as you put it to qualified CR's had already been made by the time of this conversation and I ask that because you say that the only recollection you have is that it had been determined.

A. I am trying to remember. I might very well have been in on some of the preliminary discussions leading up to this decision but I have no recollection of it.

Q. If you were in on any of those preliminary discussions, if there were any, would you have a record of them?

A. No.

Q. Do you have any record of this discussion that you have just mentioned?

A. No.

[44] Q. You have no recollection of this meeting?

A. Meeting or meetings, I don't know.

Q. What is the next recollection you have concerning the decision to recruit CR's as claims adjusters?

A. I don't have any.

Q. Were you involved at all in implementing or carrying out that decision?

A. No.

Q. Can you tell me what steps Liberty Mutual Insurance Company took to communicate to its claims representatives throughout the country the fact that that decision had been made?

A. No.

Q. Do you know whether there were any such steps?

A. No.

Q. Do you know that there were not?

A. No.

Q. Are you familiar with the duties performed by claims representatives?

A. No.

Q. Are you familiar with the duties performed by claims adjusters?

A. No.

[45] Q. So if I were to ask you to compare or contrast those two positions, you wouldn't be able to do it, is that right?

A. Based upon what I have heard in these depositions, but if you are asking my personal knowledge today, what an adjuster does and what a CR does—

Q. You don't know?

A. I don't know. I know what they did 18 or 20 years ago, an adjuster, but—

Q. You have also been present at depositions where there has been testimony concerning interviews of claims representatives for the purpose of considering them for the position of claims adjuster, is that right?

A. There has been testimony about this.

Q. Yes. You heard that testimony?

A. Yes.

Q. Now, what I want to know is prior to hearing the testimony, were you aware that those interviews had been conducted or that they were being conducted?

A. Yes.

Q. You are aware then that at some point, the decision was made to determine which of Liberty Mutual's claims representatives were qualified to perform as claims adjusters?

A. Yes.

[46] Q. When did you learn of that decision?

A. I don't know.

Q. What is the first recollection you have of that decision?

A. At the time that I became aware of the fact that they had decided to offer qualified claims representatives reclassification as claims adjusters.

Q. Was it at that time that you also learned they were going to review the various claims representatives for that purpose?

A. Yes.

Q. Was that at the same meeting that you had referred to earlier?

A. I can't say it was at the same meeting but I believe it was about the same time.

Q. Then that is something that you forget to tell me earlier when I asked you your recollection of the decision to recruit claims representatives.

A. I thought you were talking about the decision that they would do it, not about that part of it, but I am sorry if I overlooked it. No intention to.

Q. Can you tell me what steps were taken to determine which of the claims representatives would became claims [47] adjusters?

A. No.

Q. You have no personal knowledge of that other than what you have heard at depositions?

A. That's correct.

Q. Other than what you have heard at depositions, are you able to tell me how many claims representatives were offered the position of claims adjuster?

A. I can't.

Q. Are you able to tell me from what—strike.

Are you able to tell me from your personal knowledge or from what you have been told by anyone at Liberty Mutual, how the salaries of claims representatives were affected when they became claims adjusters?

A. No.

Q. You have never been told?

A. No.

Q. Do you know whether they started as claims adjusters at the prevailing salary for claims adjusters?

A. No, I don't from my own knowledge.

Q. Have you been told?

A. I don't know whether I was or whether I assumed that they did. I don't know.

[48] Q. You are the person who has custody of the personnel files of the various Liberty Mutual personnel, is that right?

A. Technical only.

Q. Technical only?

A. Yes.

Q. Can you tell me what materials are in those files, by subject matter?

A. It varies by department but generally we have in those jackets—

Q. Let's limit ourselves now to the claims representatives.

A. We would have a copy of the application, a copy of the reference material or the original of the references, original of the application, what we call a notice of personnel change which is created whenever the position is changed or the office is changed or the name is changed of an employee, we would have the employment copy as well as a termination copy for terminating employees.

That is about what we would have on an active file. I can think of no other information that would be in all of the jackets.

Q. How about the periodic reports—

A. We don't get those.

[49] Q. Where are those kept?

A. Home office.

Q. You are in the home office?

A. Home office claims department.

Q. Do you know what is in those files?

A. I do not.

Q. You are aware that certain claims representatives were offered the position of claims adjuster, is that right?

A. Not by name.

Q. But you know that certain—

A. There was a group of them.

Q. You know that certain various claims representatives were offered the position?

A. Yes.

Q. And you know that certain of them accepted the position and some did not accept the position?

A. I have been told that.

Q. Do you know whether the fact that the position had been offered, would be contained in the personnel file that you have or that the claims department has for the various claims representatives?

A. No, wouldn't have a record of those that were offered the opportunity to become—

[50] Q. Do you know whether there is such a record?

A. I do not.

Q. Have you been told?

A. I have not.

Q. You are aware also that—strike.

You are aware statements have been taken from various claims adjusters and claims representatives?

A. Yes.

Q. Do you know whether copies of those statements are in the files of the employees?

A. Not in mine. Not in the personnel jackets in my custody.

Q. Do you know whether they are in the others?

A. I don't.

Q. Have you been told?

A. I have not.

Q. When did you first learn that those statements were going to be taken or that they had been taken?

A. I have no idea.

Q. You don't know whether you knew in advance that they were going to be taken?

A. I don't.

Q. Have you seen those statements?

[51] A. Yes.

Q. Have you read them?

A. Yes, some of them.

Q. How many?

A. I don't know. I would guess five, ten.
Q. Can you tell me why you read them?
A. I guess because they were given to me and I read them.
Q. By whom were they given to you?
A. I don't know. Dan Phillips, I guess.
Q. Do you know why they were given to you?
A. Well, in connection with this.
Q. Did you read all of those that were given to you?
A. No.
Q. Were they all given to you?
A. No.
Q. Approximately how many were given to you?
A. 15, maybe.
Q. Can you tell me who took the statements that you read?
A. Larrabee, Jack Larrabee and Bill Herrick.
Q. Did the statements of Mr. Larrabee follow the same format?
A. Well, they were written statements without a form or anything, just a written statement.
[52] Q. I understand that.
A. I don't think there is any particular format. I don't understand really what you mean.
Q. Were you able to tell that the statement consisted of responses to various questions?
A. Oh, yes.
Q. And was it generally true that the same questions were being answered in each of the statements?
A. In general.
Q. Was it generally true that the same questions were being answered in the same order in each of the statements?
A. I can't recall that.
Q. In whose handwriting were the various statements?
A. I don't know.
Q. Were they in the same handwriting?
A. No.

Q. That is all of Mr. Larrabee's statements?
A. I think so. I am not acutely aware of the handwriting.
Q. Is it also true that the same questions were being answered in the statements taken by Mr. Herrick?
A. As in Mr. Larrabee's?
Q. Well, let's restrict ourselves to Mr. Herrick's.
A. Yes, I think so, followed the same general thing.
[53] Q. Did the statements taken by Mr. Herrick follow the same general theme as the statements taken by Mr. Larrabee?
A. I would think so.
Q. That is your recollection?
A. Yes.
Q. Now, were the statements that you read, taken from claims adjusters only?
A. I don't know. I don't remember.
Q. What subject matters were covered in these statements?
Mr. Grove: Don't answer the question. Same reason as I stated in Boston. It was prepared at my request and Mr. Penney's request and we claim they are attorney work products. You have a motion pending for their production right now plus the fact that obviously what Mr. Spaulding could tell you would be secondary evidence.
The statements themselves are the best evidence and since you have a motion to produce, I suggest we restrict it to that. We'll respond to that.
Q. Mr. Spaulding, you are familiar with the Want A Job Fit For A Queen brochure, are you not?
A. I have seen it.
Q. You were present at the deposition when I asked who [54] prepared it, weren't you?
A. Yes.
Q. Do you know who prepared it?
A. I do not.
Mr. Specter: Mr. Grove, you undertook to find out who prepared it and when it was in use and whether it is in use now?

Mr. Grove: Mr. Specter, I know it is not in use. When it was in use, I have not yet determined and I have not even come anywhere close to finding out who the author of it was. No one seems to know.

Q. Do you know how the form was used, Mr. Spaulding?

A. No, I do not. I had nothing to do with it.

Q. Other than what you have heard at the depositions, do you have any knowledge about this form?

A. No.

Q. You were present during the testimony to the effect that at some point in 1970 or 1971, the home office began to receive feedback to the effect that claims representatives were interested in the position of claims adjuster?

A. Yes.

Q. Now, other than what you have heard at depositions, [55] do you have any information about that feedback?

A. No, I don't

Q. Were you aware of that prior to the deposition?

A. No.

Q. You know, you have also heard testimony that women didn't appear to be interested in the position of claims adjuster and men didn't appear to be interested in the position of claims representative. Do you have any knowledge or information concerning those statements?

A. None whatsoever.

Q. So you wouldn't be able to tell me whether those were accurate observations or not?

A. I would not.

Q. Now, I understand from earlier testimony that you are the individual who answers or at least receives inquiries concerning former technical employees of Liberty Mutual Insurance Company, is that correct?

A. Former employees?

Q. Yes.

A. They come to my department, not me personally.

Q. Who receives the questions for former clerical employees?

A. They go to the office in which the person worked, [56] generally, but they are forwarded to the administrative manager in the division.

Q. Who answers them?

A. The administrative manager.

Q. What level are reference requests concerning former technical employees answered?

A. At the home office level, my department.

Q. But not by you personally?

A. That's correct.

Q. Do you approve the responses or do you see them before they go out?

A. I do not.

Q. How long has it been the practice for the reference requests concerning former technical employees to come to your department?

A. Well, they came to the home office to be answered by a department that existed prior to the establishing of the personnel services which was established in 1960.

Prior to that time, we had a department known as personnel policy and research which went out of existence and as near as I can tell, that goes back into the '40's and I don't know how much sooner than that.

Q. Do you know why it is the practice to direct reference [57] requests for former technical employes to the home office rather than to the various divisions?

A. Yes, because the divisions don't have the technical personnel jackets. They are maintained in the home office.

Q. Have you ever met Sandra Wetzel?

A. Yes.

Q. When was the first time?

A. I think it was August of 1971. Yes, August of 1971, I believe.

Q. Where did you meet?
A. Pittsburgh, our office.
Q. Who else was present?
A. Mr. Penney.
Q. Anyone else?
A. Mrs. Ross.
Q. Was that also when you first met Mrs. Ross?
A. Yes.
Q. I take it you met them together, then?
A. Yes.
Q. When was the next time you met them?
A. Either of them?
Q. Yes.
A. Yesterday.

[58] Q. Since the summer of 1971, you have not personally seen either Mrs. Wetzel or Mrs. Ross, is that right?

A. Last Friday, I was on the elevator at the 12th floor and I stopped at the 10th and I think I saw Mrs. Wetzel standing in the lobby. I am not sure.

Q. That would be the only time?

A. Yes.

Q. Would you have some record of the date on which you first met Mrs. Wetzel and Mrs. Ross?

A. The only one I could think of would be my expense account or my last year's diary.

Q. Who introduced you to Mrs. Wetzel and to Mrs. Ross?

A. Mr. Penney.

Q. Do you know whether he had met them prior to that time?

A. I believe he had.

Q. Did he tell you that he had?

A. Yes.

Q. Under what circumstances did he tell you he had met Mrs. Wetzel and Mrs. Ross?

A. I don't know that I understand what you mean.

Q. Did Mr. Penney tell you the circumstances under which he met Mrs. Wetzel and Mrs. Ross?

[59] A. In connection with the complaint to the Pennsylvania Commission.

Q. Do you know when Mrs. Wetzel and Mrs. Ross were told they were going to meet you?

A. No.

Q. What was the purpose, if there was one, of your meeting Mrs. Wetzel or Mrs. Ross?

A. The purpose was, Mr. Penney was going to discuss their complaint with them.

Q. What was the purpose of Mr. Penney's first meeting with them?

A. I assume it was in connection with their complaint.

Q. You were not there?

A. Right.

Q. Can you tell me why you were there at this other meeting?

A. I guess because—I was there because I was there, I guess.

Q. What were you supposed to do there?

A. I didn't do anything.

Q. I didn't ask you what you did. I asked you what you were supposed to do.

A. Accompany Mr. Penney.

[60] Q. And listen to what was said?

A. Yes.

Q. For some particular purpose?

A. No, except this is in my general area of interest and responsibility, complaints against the company.

Q. Did you say anything to either Mrs. Ross or Mrs. Wetzel during the course of the meeting?

A. Other than to acknowledge the introduction, I have no memory of saying anything to either one of them except to say good-bye.

Q. Is it your recollection that you did not say anything?

A. Yes.

Q. How long did that meeting last?

A. It was brief. I would think not over 15 minutes.

Q. Was there any time during the meeting that Mrs. Wetzel and Mrs. Ross were not both present?

A. No.

Q. Was there any time during the meeting that the four of you were not all present, that is you, Mr. Penney and Mrs. Ross and Mrs. Wetzel?

A. No.

Q. Where at your Pittsburgh office did the meeting take place?

[61] A. My recollection is on the 16th floor, claims training classroom.

Q. Did you make any notes concerning that meeting?

A. I did not.

Q. Do you know whether Mr. Penney did?

A. I do not.

Q. Tell me everything you remember about that meeting.

A. I recall Mr. Penney telling them that the company would not do certain things that they are asking. One was to pay them the same amount of money as was being paid to claims adjusters.

I recall that he offered them the opportunity to be reclassified as claims adjusters.

Q. What else do you remember?

A. That is it, as far as I know, as far as I can recall.

Q. You say that Mr. Penney told Mrs. Wetzel and Mrs. Ross that the company would not do certain things, is that right?

A. Yes.

Q. One of those things was pay claims representatives the same as claims adjusters?

A. Right.

Q. Were there any other things he said the company would not do?

[62] A. I don't know. I don't remember anything else.

Q. Did Mr. Penney offer to pay Mrs. Wetzel back pay?

A. No.

Q. Did he offer Mrs. Ross back pay?

A. No.

Q. Tell me to the best of your recollection, just what Mr. Penney said when he offered the position of claims adjuster to Mrs. Wetzel and Mrs. Ross.

A. I think I have.

Q. Well, tell me again.

A. He said that he would offer them the opportunity to be reclassified as claims adjusters.

Q. Well, did he say anything about their qualifications for the position?

A. Not to my recollection.

Q. Did he say that their work had been reviewed?

A. I don't remember.

Q. Did he say that the company felt they could do the job?

A. I think he must have but I have no definite recollection of the words he used or written notes of the conversation itself but I think he probably did.

Q. You are positive that he used the word reclassified?

[63] A. That is my memory.

Q. Do you have a specific recollection of his saying that?

A. Yes, I think I do.

Q. Did he extend the offer to Mrs. Wetzel and Mrs. Ross simultaneously?

A. Yes.

Q. Was there any discussion of the complaints that Mrs. Wetzel and Mrs. Ross had?

A. No, not by Mr. Penney.

Q. By anyone?

A. My recollection is, it was testified yesterday that Mrs. Ross and Mrs. Wetzel, they referred to the fact that the opportunity to become claims adjusters was not the whole basis of their complaint.

Q. It is your recollection that they did say that?

A. Yes.

Q. When you came to Pittsburgh to meet with Mrs. Wetzel and Mrs. Ross, did you know that Mr. Penney was going to offer them the position of claims adjuster?

A. Yes.

Q. So when you told me that the purpose of the meeting was for Mr. Penney to discuss their complaints, that was not [64] the whole purpose of the meeting?

A. That was their complaint.

Q. That was one of their complaints, was it not?

A. Yes.

Q. You knew that was not their only complaint, didn't you?

A. Well, I knew that their complaint, as far as I was concerned at that time, I understood their complaint to be they wanted to be outside claims adjusters and they felt the CR's should be paid the same amount of money as outside claims adjusters. That was my understanding of their complaint at the time we visited them in Pittsburgh.

Q. Prior to your meeting in Pittsburgh, had you read the complaint that was filled with the Pennsylvania Human Relations Commission?

A. I am sure I did. I have no recollection when but I am sure I did.

Q. Did Mr. Penney tell Mrs. Wetzel and Mrs. Ross at that meeting that—strike.

At that meeting, did Mr. Penney tell Mrs. Wetzel and Mrs. Ross anything about the company's attitude toward women generally as claims adjusters?

A. I think he may have said something to the effect that the company felt that the job of claims adjuster was not [65] ideally suited to women.

Q. Is it your recollection that he said that?

A. Something to that effect, yes.

Q. Did he go into any detail, did he say why it wasn't suited to women?

A. Well, I don't believe so, perhaps other than beyond a very brief reference to the type of work that an adjuster does and the places he goes, there was a brief reference to this.

Q. You are sure there was some reference?

A. Yes, I am.

Q. Did he indicate that that had been a long-standing attitude?

A. Yes.

Q. Did he indicate whether it might be changed in the future but that it would take a long time to change?

A. I don't remember that.

Q. How did Mrs. Wetzel and Mrs. Ross respond? I would like you to tell me separately for each of them.

A. My memory is they both said no. Then one of them, I don't remember which one, but I think it was Mrs. Wetzel expanded on their reason for saying no.

Q. And what did she say?

A. Words to the effect that accepting the job of adjuster [66] would not solve the basis for their complaint, words to that effect. I would not resolve the basis for their complaint, something of that nature.

Q. Did they go into any more detail?

A. Not that I recall.

Q. Did they tell you what the basis of their complaint was or what the bases were?

A. They may have referred to the fact that they felt that would not—the other issue involved was the equal pay for the claims representative and the outside adjuster.

Q. You were aware by the time of this meeting, were you not, that Mrs. Wetzel and Mrs. Ross were claiming that Liberty Mutual treated female employees differently than it treated its male employees?

A. I was aware of the complaint of the Commission.

Q. And you were aware that was the basis of the complaint?

A. Yes.

Q. Now, you were present, yesterday, weren't you when Mrs. Ross testified that when Mr. Penney extended the offer, he asked that the fact of the meeting be kept confidential?

A. Yes.

Q. Now, I want to be fair with you. When that testimony [67] was given, I observed Mr. Penney ask you whether you remembered that and I observed your reply that you didn't know. Do you have any recollection of Mr. Penney's making that statement at that meeting?

A. I have none.

Q. Are you able to testify today under oath that he did not make it?

A. I can't believe that he made it but I can't tell you that I can positively say he did.

Q. So you are not in a position to say that he did or did not make it of your own knowledge?

A. I don't think he made it.

Q. Let's have the question again.

(Thereupon the record was read.)

A. How can I answer it other than to say I don't think he made it.

Q. Let me tell you I am not interested at this point whether you believe he did or did not make the statement but whether you can testify under oath whether he did or did not.

A. I can't.

Q. You cannot?

A. That's right.

Q. Have you discussed with Mr. Penney whether he made [68] that statement?

A. Yes.

Q. And what did he say?

Mr. Grove: Don't answer it. Attorney-client relationship.

Q. When did you discuss that with Mr. Penney?

A. Last evening.

Q. Where?

A. I don't remember. Whether at dinner or in the room or walking up to the office or walking to the hotel or where.

Q. Under what circumstances did you discuss it?

A. Well, I guess you would have to say I was telling him that I had no recollection of such a statement and I honestly don't believe that he made it.

Q. Was it during preparation for your testimony today that you discussed it with Mr. Penney?

A. No.

Q. Was it in connection with some particular thing that he was doing or you were doing in connection with this case?

A. Well, the testimony, I guess it was just in reviewing the testimony from yesterday.

Q. Was anyone else present when you discussed it with Mr. Penney?

[69] A. Mr. Grove.

Q. Anyone else?

A. No.

Q. At that meeting, did Mr. Penney discuss with Mrs. Ross and Mrs. Wetzel, why the company would not pay claims representatives on the same scale as claims adjusters?

A. Other than the fact I believe he said they were two different jobs.

Q. Is it your recollection?

A. That is what he said.

Q. Did he explain what was different about the jobs?

A. No, not to my recollection.

Q. Did he offer any explanation concerning what made the jobs different?

A. No.

Q. Did he tell them what their salary would be if they accepted the positions?

A. I don't recall.

Q. Now, you have testified that prior to the time when you met with Mr. Penney and Mrs. Ross and Mrs. Wetzel, Mr. Penney met with them. Now, did Mr. Penney report to you the results of his first meeting?

A. No.

[70] Q. Were you present in Boston on September 26, 1972 when Mr. Penney testified under oath that he reported his findings to both you and Mr. Carr?

A. Yes. I was present when he reported to Mr. Carr but he didn't report to me. He reported to Mr. Carr.

Q. So his testimony that he reported to you was inaccurate?

A. No, not in a sense that I was there and I heard the report. I was present when he reported the conversation to Mr. Carr. I thought you meant did he come to me and report it.

Q. Was anyone else present when Mr. Penney reported to you or Mr. Carr or both?

A. Not to my memory.

Q. If I were to suggest to you that the meeting that you attended with Mrs. Wetzel and Mrs. Ross and Mr. Penney took place in July of 1971, would that refresh your recollection?

A. No. I know it was sometime in July or August or September, it was in that period of time. I don't remember when. I don't remember which month.

(Thereupon a short recess was taken.)

Q. Was the meeting that you had with Mrs. Ross and Mrs. Wetzel, recorded?

A. No.

[71] Q. Do you know what steps, if any, were taken by anyone acting on behalf of Liberty Mutual to determine whether Mrs. Ross and Mrs. Wetzel were qualified to be reclassified, as you put it, prior to the time the job was offered?

A. No.

Q. Have you been told any steps were taken?

A. I was told that they were going to appraise their work. How they went about it, who did it, I don't know.

Q. That was before the time the offer was made?

A. Yes.

Q. How long before?

A. I don't recall.

Q. Who told you their work was going to be appraised?

A. Who told me?

Q. Yes.

A. I would guess Ed Carr.

Q. Was it your recollection that he told you that?

A. Either Ed Carr or Dan Phillips.

Q. Is it your understanding that someone did appraise Mrs. Wetzel's work and Mrs. Ross' work prior to the time it was decided to offer them the position?

A. Yes.

Q. Have you been told the results of that appraisal?

[72] A. No.

Q. Have you been told whether their work was found to be satisfactory.

A. I assumed that it was when the offer was made for them to be reclassified. I assume their work met the standards.

Q. Are you aware Mrs. Ross requested a transfer to the Detroit office?

A. Yes.

Q. When did you learn of that?

A. Just before or just after she terminated. I don't remember which.

Q. Did you at some point, learn that her request was denied?

A. Yes.

Q. When did you learn that?

A. At the time, I guess I was told she requested it. I was away, out of town. My memory is that I got back from a trip somewhere and was told about this.

Q. Since your recollection seems to be so hazy, let me ask you to tell me everything you know about her request and the decision to deny it.

A. All I know is she made the request and the request was denied.

[73] Q. Were you told why it was denied.

A. No.

Q. Who told you she made the request?

A. Either Ed Carr or Dan Phillips.

Q. Who told you it was denied?

A. Either one of them.

Q. Whichever told you she had made it?

A. Yes.

Q. Did anyone tell you why the decision was made to offer the position of claims adjuster to Mrs. Ross and Mrs.Wetzel?

A. My memory of the discussions was that was predicated on feeling that is what they wanted to do.

Q. When Mr. Penney reported to Mr. Carr in your presence, did he report that Mrs. Wetzel and Mrs. Ross said they wanted to be claims adjusters?

Mr. Grove: Don't answer the question. Attorney-client privilege.

Mr. Specter: Let me suggest something to you in the interest of not having to burden the court. To the extent that may be within the privilege and I don't know that it is, Mr. Penney has already testified to it and I believe waived the privilege.

Mr. Grove: Mr. Penney might have [74] waived it on his behalf but I am going to tell Mr. Spaulding not to answer the question.

Q. Were you told that the decision to offer the position of claims adjuster to Mrs. Ross and Mrs. Wetzel had anything to do with the charges they brought before the Pennsylvania Human Relations Commission?

Mr. Grove: Don't answer the question if Mr. Penney was the one that had the discussion with you concerning this.

Did you have a discussion with Mr. Penney concerning this?

The Witness: In Mr. Carr's office.

Mr. Grove: Okay. Don't answer the question.

Q. Were there any other discussions other than with Mr. Penney?

A. I honestly don't know.

Q. Are you familiar with Liberty Mutual Insurance Company's recruiting program?

A. For technical people?

Q. Yes.

A. Not in any great detail.

Q. Tell me what you do know about it.

[75] A. I know they recruit at colleges and I know they employ through employment agencies. Our technical staff comes from those two sources, primarily, in all departments.

Q. Since the spring of 1971, have you had occasion to meet with any representatives of the Pennsylvania Human Relations Commission concerning the charges brought by Mrs. Ross and Mrs. Wetzel?

A. Yes.

Q. On how many occasions?

A. I believe only once.

Q. With whom did you meet?

A. Miss Holiday.

Q. Where did you meet?

A. Pittsburgh.

Q. Where in Pittsburgh?

A. Our office.

Q. Who all was present?

A. Mr. Penney.

Q. Anyone else?

A. No.

Q. Was that meeting recorded?

A. No.

Q. Did you make notes of it?

[76] A. No.

Q. Did Mr. Penney?

A. I don't know.

Q. Did Miss Holliday or Mrs. Holliday—

A. I don't know if it is Miss or Mrs.

Q. Did she make notes?

A. I don't know.

Q. How long did the meeting last?

A. I would—my memory is less than a half-hour.

Q. Did you come to Pittsburgh from Boston for the express purpose of attending that meeting?

A. Yes.

Q. Tell me everything you recall about the meeting.

A. I recall Mr. Penney advised Miss Holliday that he had offered Mrs. Ross and Mrs. Wetzel the opportunity to be reclassified as outside claims adjusters and that they had refused

Q. Anything else?

A. No.

Q. Do you recall anything that Miss Holliday said?

A. No, not in detail, I can't recall—I know she spoke but I don't remember what she said.

Q. You don't remember the substance of anything she said?

[77] A. No.

Q. Did you say anything?

A. Gee, I probably did but I don't remember what.

Q. You remember none of it?

A. No, I don't remember.

Q. Prior to that meeting, the Commission had served one or more interrogatories upon Liberty Mutual, is that right?

A. I think there were interrogatories filed and I assume it was before the meeting. I have no date in mind as to when they were served but I assume it was prior.

Q. Was that interrogatory discussed at the meeting?

A. Gee, it might have been. Now that you mention it, it might have been. I have no memory of it but I think it was.

Q. Now that you have some recollection of its having been discussed, would tell me what you recall about that discussion?

A. We were going to answer it, I guess, I don't remember whether all of it or part of it or what.

Q. Let me ask you not to guess.

A. I don't—

Mr. Grove: Answer it any way you like.

A. I don't remember definitely.

Q. It is your recollection then that the position was [78] taken by Liberty Mutual at that meeting that at least part of the interrogatory would not be answered?

A. That is my memory.

Q. Who said that at the meeting?

A. Mr. Penney.

Mr. Grove: Mr. Specter, if it serves any purpose, I think Mr. Penney mentioned we would be happy to indicate to you we did not answer the interrogatories.

Q. Was there any discussion at that meeting of Liberty Mutual's structure as it relates to the Pittsburgh office, that is whether that is a regional office or an encompassing some broad territory?

A. I don't recall such a conversation.

Q. Was there any discussion about whether the company considered the job of outside adjuster as a job for women?

A. I don't recall that.

Q. Is it possible that that was discussed?

A. It could have been.

Q. You have no recollection?

A. I have no recollection.

Q. Do you have any recollection of Mr. Penney stating at the meeting that the job was more suitable for men?

[79] A. No.

Q. Was there any discussion of whether there was any training for the position of claims adjuster?

A. I don't recall any.

Q. Did Mrs. or Miss Holliday request any other information at that meeting?

A. I don't recall.

Q. Was there any discussion of Liberty Mutual's recruiting practices?

A. I don't recall.

Q. Was there any discussion of newspaper advertisements for prospective Liberty Mutual employees?

A. I don't recall.

Q. Do you know when that meeting took place?

A. Other than in sometime either in August or September, in that general time.

Q. By that time, had—

A. I don't recall the exact dates.

Q. Whenever the date was, had Liberty Mutual begun its program of recruiting claims representatives as claims adjusters?

A. I don't know. It was about that time but I don't know which preceded what.

[80] Q. Was there any discussion at that meeting about whether the job of outside adjuster had been offered to a number of females?

A. I don't recall that. I know Miss or Mrs. Holliday was told Mr. Penney had offered the job to Mrs. Ross and Mrs. Wetzel. I don't recall anything about any other CR's being involved.

Q. Did Mrs. Holiday ask why the job offer had been made to Mrs. Wetzel and Mrs. Ross?

A. I don't recall if she did.

Q. Do you recall whether Mr. Penney told her that the offer was made because of the complaint brought to the Pennsylvania Human Relations Commission?

A. If he didn't say those exact words, I am sure it was in that context.

Q. Is that why the job offer was made?

A. To them, yes.

Q. Were Mrs. Ross and Mrs. Wetzel told that is why the offer was made?

A. I am not sure. In so many words, I am not sure but I am sure it was known it arose out of the complaint.

Q. Did Mr. Penney tell Mrs. Holliday that the job offer had been made because of the complaint to the Commission—[81] strike.

Did he tell Mrs. Holliday that Mrs. Wetzel and Mrs. Ross had been told that they had been offered the job because of the complaint they had lodged?

A. I don't recall that part of it but I think we all realized it arose out of the complaint.

Q. Was there any discussion at that meeting concerning Mrs. Ross' and Mrs. Wetzel's complaints about inquires into anticipated marriage and family size—

A. I don't recall that line of discussion at all.

Q. Are you able to testify today that there was no such discussion at that meeting?

A. Not to my recollection.

Q. Is it your recollection there was no such discussion?

A. I have no recollection there was or wasn't.

Q. Do you have any recollection of any discussion concerning inquiries about birth control pills at that meeting?

A. Same.

Q. Did Mr. Penney tell Mrs. Holliday that he was willing to discuss a settlement with Mrs. Ross and Mrs. Wetzel?

A. I have no recollection of that.

Q. Did he make any statements about the attitude of the [82] company in regard to female employees?

A. In regard to female employees, no, as I recall.

Q. Did Mrs. Holliday ask if there was a union for the employees?

A. I don't remember.

Q. Did Mr. Penney indicate whether he felt the complaint lodged by Mrs. Wetzel and Mrs. Ross was a serious one?

A. I don't recall any discussion about whether it was serious or not serious.

Q. Did he indicate or state to Mrs. Holliday his opinion concerning what Mrs. Ross and Mrs. Wetzel were most interested in?

A. No, not to my recollection.

Q. Was there any discussion concerning the company's employment policies generally at that meeting?

A. Not to my recollection.

Q. Did you report to anyone at Liberty Mutual concerning the meeting?

A. No.

Q. Did you know whether Mr. Penney did?

A. I do not.

Q. You are not issued a hard hat, are you?

A. No, I am not.

[83] Q. How about a brief case?

A. I have a brief case.

Q. Given to you by Liberty Mutual?

A. Well, it was given to me by a friend of mine at Liberty Mutual.

Mr. Specter: That is it.

Further Examination by Mr. Grove

Q. Mr. Spaulding, you testified that you didn't believe that Mr. Penney made the comment to Mrs. Wetzel and Mrs. Ross at the meeting here in Pittsburgh that they should not discuss with anyone the offer that he was making with them. Upon what do you base your belief?

A. Well, my memory is that—

Mr. Specter: Just a second. Do you want him to state everything upon which he bases that belief?

Mrs. Grove: Yes.

A. My memory is that it had been decided that other CR's —qualified CR's would be offered the opportunity to be reclassified and it wouldn't make any sense to tell them not to talk about it because it was going to be common knowledge and

it would be common knowledge after the offer was made to [84] them. So I can't believe it was said.

Mr. Grove: That is all.

Further Examination by Mr. Specter

Q. Is there any other basis for your belief?

A. No, that is it.

Q. Mr. Grove asked you to testify as to every reason you have for not believing Mr. Penney—

A. Those are the reasons.

Q. There are no others?

A. No.

Q. How about anything Mr. Penney told you?

A. Pardon?

Q. How about anything Mr. Penney told you?

A. Mr. Penney told me?

Q. Yes. Did he tell you that he did not make the statement?

Mr. Grove: Don't answer that.

Mr. Specter: Just a second. You have asked for all of the reasons of his belief and if something Mr. Penney said is one of them, a complete answer requires him to state it.

Mr. Grove: Let's go back to the [85] question.

Q. The question is, did Mr. Penney tell you that he did not make the statement?

A. I don't think so.

Mr. Specter: Okay. That is it.

Mr. Grove: We won't waive signature. Send the original to Mr. Spaulding.

.....

KENNETH SPAULDING

Sworn to and subscribed to before me this ..... day of ....., 1972.

.....

Notary Public

[86] CERTIFICATE

COMMONWEALTH OF PENNSYLVANIA }
COUNTY OF ALLEGHENY } ss.

I, Dorothy Johnson, a Notary Public in and for the Commonwealth of Pennsylvania, duly commissioned and qualified, do hereby certify that the within-named Kenneth Spaulding was by me first duly sworn to testify the truth, the whole truth, and nothing but the truth in the cause aforesaid; that the testimony then given by him was by me reduced to stenotype in the presence of said witness, afterwards transcribed upon a typewriter, and that the foregoing is a true and correct transcript of the testimony so given by him as aforesaid.

I do further certify that this deposition was taken at the time and place in the foregoing caption specified, and was completed without adjournment.

I do further certify that I am not a relative, counsel or attorney of either party, nor am I otherwise interested in the event of this action.

In witness whereof, I have hereunto set my hand and affixed my seal of office at Pittsburgh, Pennsylvania, on this 1st day of November, 1972.

/s/ DOROTHY JOHNSON
Dorothy Johnson
Notary Public

In and for the Commonwealth of Pennsylvania.

My Commission expires April 9, 1973.

IN THE UNITED STATES DISTRICT COURT

* * (Caption—72-169) * *

DEPOSITION OF KENNETH SPAULDING
MONDAY, NOVEMBER 27, 1972

The deposition of Kenneth Spaulding, witness herein, called by the defendant for examination under the Federal Rules of Civil Procedure, taken before me, the undersigned, Dorothy Johnson, a Notary Public in and for the Commonwealth of Pennsylvania, pursuant to notice, at the offices of Liberty Mutual Insurance Company, Clark Building, Pittsburgh, Pennsylvania, commencing at 11:30 o'clock a.m., the day and date above set forth.

[2] Appearances:

On behalf of the defendant: Kalvin M. Grove, Esquire, Chicago Title & Trust Building, 111 West Washington Street, Chicago, Illinois 60602

PROCEEDINGS

KENNETH SPAULDING witness herein called by the defendant for examination under the Federal Rules of Civil Procedure, having been first duly sworn, as hereinafter certified, was examined and testified as follows:

Mr. Grove: This is a correction of deposition pursuant to Rule 30(e) of the Federal Rules of Civil Procedure.

Mr. Spaulding will start and then Mr. Raymond.

Mr. Spaulding: Page 14, Line 1, the correct answer is yes. A leave of absence has no effect of benefits of seniority.

Mr. Grove: Why are you changing it?

Mr. Spaulding: The answer is wrong as given. It is wrong as given.

[3] Page 15, Line 18, the correct answer is September, 1970. I was wrong in the date of March of 1967.

Page 16, Line 19, the answer is correct on the assumption that the question is based on September, 1970.

Page 17, Line 2, the answer is correct on the assumption that the question is based on September, 1970.

Page 28, Line 11, change three to two. So the answer will read no. We have a two-year income protection plan if you have been with us more than two months and less than five years. The reason for the change is that three is wrong.

Page 31, Line 11, the answer should be changed to read as follows: Overtime hours for inside nonexempt personnel are entered on a form called attendance and turnover record except in those states that require a time slip period

Overtime hours for all outside nonexempt personnel are recorded on time slips. The record of overtime is prepared from the attendance and turnover record or time slips every two weeks for nonexempt [4] inside personnel.

If no overtime has been worked by anyone in the unit, none is recorded by the supervisor on the form.

If overtime has been worked, the supervisor lists the names and the hours worked of each person who has worked overtime.

The outside employee's record of overtime worked its prepared from individual time slips listing the name and hours worked of any outside nonexempt person who worked overtime.

If no one in the unit worked overtime, the outside employee's record of overtime worked is not prepared.

Outside nonexempt employees complete a time slip every pay period (two weeks) whether they work overtime or not.

We have a record-of-overtime form for nonexempt inside employees in each department and/or office for each pay period.

We have a complete time slip for each nonexempt outside employee for each period.

This answers all the questions asked on Pages [5] 31 and 32 on overtime in a corrected fashion.

The reason for the change is that upon reading the answers to those questions, I discovered they were not accurate.

Page 85, Line 4, the answer should be yes, upon reflection, I recall that Mr. Penney did tell me that he did not make the statement.

Mr. Grove: Dorothy, would you send the original to Mr. Spaulding, a copy to myself and a copy to Mr. Specter and we'll waive signature on that and Mr. Spaulding will return to you that and the other one, the original, so that it could be filed.

IN THE UNITED STATES DISTRICT COURT
* * (Caption—72-169) * *

MOTION FOR SUMMARY JUDGMENT

Now Come the plaintiffs, by their attorneys, Litman Litman Harris and Specter, P. A., and Fine, Perlow and Stone, and, on behalf of themselves and the members of the class which they represent, move this Honorable Court for Summary Judgment on the issue of liability alone pursuant to Rule 56 of the Federal Rules of Civil Procedure, as amended, as follows:

1. There is no genuine issue as to any of the following material facts and the plaintiffs and the members of the class which they represent are, therefore, entitled to a judgment as a matter of law:

(a) Since July 1, 1965, defendant has discriminated in hiring and promotion against the plaintiffs and the members of the class represented by plaintiffs by reason of their sex with respect to affording or making available to them the following positions in it Claims Department: Claims Adjuster, Claims Supervisor, Branch Office Manager, Division Claims Manager, Assistant Division Claims Manager, Manager of Home Office Examiners Division, Assistant Vice President and Vice President;

(b) Since July 1, 1965, defendant has discriminated against the plaintiffs and the members of the class represented by plaintiffs by reason of their sex with respect to compensation, terms, conditions and privileges of employment;

Wherefore, plaintiffs move this Honorable Court to render summary judgment in their favor and in favor of the members of the class which they represent on the issue of liability alone on the matters referred to herein and to enjoin the defendant from engaging in such practices in the future.

LITMAN LITMAN HARRIS AND SPECTER, P. A.
By: .....
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

The undersigned, Howard A. Specter, hereby certifies that on the 23rd day of March, 1973, the within Motion for Summary Judgment was served on defense counsel by mailing, postage prepaid, true and correct copies to the offices of:

Kalvin M. Grove, Esquire
111 West Washington Street
Chicago, Illinois 60602

Robert A. Penney, Esquire
175 Berkeley Street
Boston, Massachusetts 02226

Clem R. Kyle, Esquire
717 Liberty Avenue
Pittsburgh, Pennsylvania 15222

.....
HOWARD A. SPECTER

EXHIBIT E TO PLAINTIFF'S BRIEF FOR SUMMARY JUDGMENT

IN THE UNITED STATES DISTRICT COURT

* * (Caption—72-169) * *

AFFIDAVIT OF HOWARD A. SPECTER IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

Before Me, the undersigned authority, personally appeared Howard A. Specter, who being duly sworn according to law, deposes and says that he has personal knowledge of the following facts and that such facts are true and correct:

1. That he is one of the attorneys for the plaintiffs in the above-captioned action:

2. That Kenneth W. Raymond, the defendant's Assistant Division Claims Manager for the Central Division, and Kenneth D. Spaulding, the defendant's Manager of Personnel Services, testified at their depositions on April 5, 1972, and October 17, 1972, respectively, that the defendant has a Personnel Policies and Procedures Manual which applies to all employees and departments;

3. That Kalvin M. Grove, one of the attorneys for the defendants in this action, agreed at the time of the depositions to produce a copy of the aforesaid Manual and that it was agreed that Mr. Spaulding would forward a copy of the Manual to this counsel for the plaintiffs;

4. That the defendant delivered to this defendant the Personnel Polices and Procedures Manual a copy of which is annexed to the Plaintiffs' Brief in Support of Motion for Summary Judgment as Exhibit H and represented it to be the Manual referred to at the depositions;

5. That in response to plaintiffs' Requests for Production of Documents, the defendant agreed to produce copies of the

Claims Representative training manuals described in its answer 8.3(a) through (d) to Plaintiffs' Interrogatories to Defendant —Second Set and that the documents annexed to the Plaintiffs' Brief in Support of Motion for Summary Judgment as Exhibit Q are true and correct copies of the cover and first seven pages of the first of those manuals;

6. That in response to plaintiffs' Request for Production of Documents the defendant agreed to produce and did produce copies of the Claims Adjuster recruitment brochures described in its Answers to Interrogatories 37(f) and 38.2(a) through (d) and that the documents annexed to the Plaintiffs' Brief in Support of Motion for Summary Judgment as Exhibits C & D are true and correct copies of two of those brochures;

7. That in response to plaintiffs' Request for Production of Documents the defendants agreed to produce and did produce copies of the employee group benefit plans applicable to technical personnel within its Claims Department and that the documents annexed to the Plaintiffs' Brief in Support of Motion for Summary Judgment as Exhibits I through M are true and correct copies of pages abstracted from the documents produced and dated respectively March 1964, March 1967, April 1968, January 1969 and June 1970;

8. And further deponent saith not.

Sworn to and subscribed before me this 18th day of June, 1973.

/s/ HOWARD A. SPECTER
/s/ DARLYNE RUFFALO
Notary Public

Darlyne Ruffalo, Notary Public, Pittsburgh, Allegheny County, Pa. My commission expires April 18, 1977.

EXHIBIT H TO PLAINTIFF'S BRIEF FOR SUMMARY JUDGMENT

203. *Long Term Absence Policy*

Continued absence caused by illness of eight or more calendar days constitutes a long term illness. All such illnesses should be reported on the Long Term Illness Report, Per. 148, whether the employee qualifies for the Income Protection Plan or not. See paragraph 211 for procedure in connection with the reporting of long term illness and reinstatements from Long Term Illnesses.

Our Income Protection Plan provides for the continuation of Income if during the first seven days of a Long Term Illness the employee is under the care and treatment of a doctor.

If during a long term illness, a doctor has not given treatment until after eight calendar days the benefits of Income Protection are forfeited until the day that the doctor is consulted. This means in effect that the employee will receive Income benefits beginning the day that the doctor is called in on the case. If during the long term illness no doctor is consulted then no Income Protection Benefits are payable.

If the maximum of ten days of short term absence has not already occurred during the calendar year, a maximum of five days for each long term absence in which a doctor has *not* been consulted during the first seven days may be considered as short term and paid for under our short term absence policy or a lesser number of days depending on the number already used. Not more than five days for each absence may be classified as short term and not more than a maximum of ten days for all reasons shall be paid for during the year.

Home Office Salary must be properly advised with a copy to Home Office Benefit Plans if any available days of "short term" absence are to be paid on a Long Term Illnesss as described above. In addition to Per. 148, Report of Long Term Illness,

covering the beginning and ending of lost time, Per. 158, Salary Deduction Authorization, must be forwarded with respect to any and all days for which salary is to be deducted. Coding on attendance records should be "1" (short term illness) for those days payable and "12" (unexcused) for days not payable. Code 9 may be used only for the period covered by our insurance benefits.

Persons who have been with the Company less than 3 months and who therefore have not qualified for our Income Protection Plan will have salary deductions made for all days absent. The Report of Long Term Illness, Per. 148, should be marked "no benefits applicable" for persons whose length of service does not qualify for the Income Protection Plan. Some states have statutory disability insurance and in those states, statutory benefits are paid to employees of less than 3 months service. In such cases, Per. 148 should be marked "Statutory Benefits". Long Term Illness of persons with less than 3 months service should be coded (1) to indicate that all of the absence is being deducted.

An employee who is absent for more than ten consecutive work days during the three-month probationary period will be terminated. Upon return to work, this individual will be re-employed provided he or she is able to pass a new pre-placement examination and will begin a new three-month probationary period.

204. *Pregnancy Policy*

No Income Protection Benefits are payable for absences due to pregnancy.

However, in the case of a long term illness due to pregnancy where the doctor is seen, the Supervisor may in his discretion consider the first five days of such absences as payable under our "short term" absence policy.

EXHIBIT I TO PLAINTIFF'S BRIEF FOR SUMMARY JUDGMENT

INSURANCE BENEFITS begin with the eighth day of disability. If you do not receive treatment before the eighth day of disability, however, benefits do not begin until the first day on which you are treated.

For 51 weeks, the benefits is two-thirds of your salary to a maximum of $150.00 per week and is payable only if you are unable to perform the duties of your occupation.

For 51 weeks, the benefit is two-thirds of your salary to a maximum of $115.00 per week and is payable only if you are unable to perform the duties of any occupation.

These benefits are payable for each period of disability. Successive periods due to the same or related causes will be considered one period of disability.

LIMITATIONS ON INSURANCE BENEFITS:

Benefits are not payable for disability due to occupational injury or to sickness covered under Workmen's Compensation Insurance; for disability due to pregnancy or any cause related to pregnancy; for disability in excess of 104 weeks; or for disability during which you were not treated by a physician licensed to practice medicine.

SUPPLEMENTARY SALARY BENEFITS are provided by the Company to help fill the gap between insurance benefits and your usual earnings. In cases covered by insurance under the Income Protection Plan. Liberty Mutual pays your full salary for the first week of disability. Then, for as many weeks as you have completed years of service with the Company, it pays one-half the difference between full salary and the insurance benefits.

In cases covered under Workmen's Compensation Insurance, the Company will pay, for a period of not more than two years, the difference between the amount you receive and that which you would have received in case of non-occupational injury or

sickness. (In such event, if the disability for which supplementary salary benefits are paid is due to injury or sickness for which a third person is responsible. Liberty Mutual is to be reimbursed out of any damages owed you by the responsible party.)

YOUR COST for the Income Protection Insurance benefits is 33 cents for each $100 of salary. (This is half of the cost; Liberty Mutual pays the other half to you.) For example:

At Weekly Salary of	Bi-Weekly Salary of	Bi-Weekly Cost (Payroll Deduction)
$ 50.	$100.	$ .33
60.	120.	.40
90.	180.	.59
150.	300.	.99
225.	450.	1.49 (max.)

These rates apply in all states except those where compulsory laws necessitate slight variations. The rates are based on present insurance costs and are subject to change if insurance costs change.

YOU BECOME ELIGIBLE after you have completed three months of continuous full-time employment if then actively at work; otherwise, on the date of return to active work. Income Protection Insurance is taken by a full-time employees as a condition of employment.

SPECIAL STATUTORY DISABILITY BENEFITS apply in California, New Jersey, New York and Rhode Island. Employees in these states will be insured for state-required benefits from the first day of employment. You still become eligible for the Income Protection plan after completing three months of continuous full-time employment.

If you are employed in one of these states and disability occurs after you are insured for Income Protection, you will receive under the Income Protection plan the difference between the amount paid by statutory accident and sickness insurance and the benefit you would ordinarily receive from the Income Protection plan.

EXHIBIT J TO PLAINTIFF'S BRIEF FOR SUMMARY JUDGMENT

INSURANCE BENEFITS begin with the eighth day of disability. Employees with more than three months but less than five years of continuous full time service will receive a benefit of two-thirds of salary to a maximum of $150.00 per week, for 103 weeks.

Employees with five years or more of continuous full time service will receive a benefit of two-thirds of salary to a maximum of $275.00 per week to age 65.

These benefits are payable during the first year of disability if you are unable to perform the duties of your occupation. Benefits are payable beyond the first year of disability only if you are unable to perform the duties of any occupation.

Benefits payable for any week of disability will be reduced by amounts payable under workmen's compensation and similar laws, social security laws (primary and dependent benefits) and other statutes, any retirement plan, any group insurance plan except a group policy held by Liberty Mutual, and any remuneration earned during such week.

Benefits are payable for each period of disability, Successive periods due to the same or related causes will be considered one period of disability.

LIMITATIONS ON INSURANCE BENEFITS:

Benefits are not payable for disability due to pregnancy or any cause related to pregnancy, any act of declared or undeclared war, attempted suicide or intentionally self-inflicted injury, or for any disability which does not require throughout its continuance the regular attendance of a physician licensed to prescribe and administer all drugs and to perform all surgical procedures. No benefits will be paid beyond age 65.

SUPPLEMENTARY SALARY BENEFITS are provided by the Company to help fill the gap between insurance benefits and your usual earnings. In cases covered by insurance under the Income Protection Plan. Liberty Mutual pays your full salary for the first week of disability. Then, for as many weeks as you have completed years of service with the Company, it pays one-half the difference between full salary and the insurance benefits.

YOUR COST for the Income Protection Insurance benefits is 33 cents for each $100 of salary. (This is less than one-third of the cost: Liberty Mutual pays the balance for you.) For example:

At Weekly Salary of	Bi-Weekly Salary of	Bi-Weekly Cost (Payroll Deduction)
$ 50.	$100.	$ .33
60.	120.	.40
90.	180.	.59
150.	300.	.99
225.	450.	1.49 (max.)

These rates apply in all states except those where compulsory laws necessitate slight variations. The rates are based on present insurance costs and are subject to change if insurance costs change.

If you are absent from work for any reason, other than vacation or paid excused absence, on the date your insurance would otherwise become effective, the insurance will not be effective until you return to work.

Income Protection Insurance is taken by all full time employees as a condition of employment:

SPECIAL STATUTORY DISABILITY BENEFITS apply in California, New Jersey, New York and Rhode Island. Employees in these states will be insured for state-required benefits from the first day of employment. You still become eligible for the Income Protection plan after completing three months of continuous full-time employment.

If you are employed in one of these states and disability occurs after you are insured for Income Protection, you will receive under the Income Protection plan the difference between the amount paid by statutory accident and sickness insurance and the benefit you would ordinarily receive from the Income Protection plan.

EXHIBIT K ATTACHED TO PLAINTIFF'S BRIEF FOR SUMMARY JUDGMENT

INSURANCE BENEFITS begin with the eighth day of disability. Employees with more than three months but less than five years of continuous full time service will receive a benefit of two-thirds of salary to a maximum of $150.00 per week, for 103 weeks.

Employees with five years or more of continuous full time service will receive a benefit of two-thirds of salary to a maximum of $275.00 per week to age 65.

These benefits are payable during the first year of disability if you are unable to perform the duties of your occupation. Benefits are payable beyond the first year of disability only if you are unable to perform the duties of any occupation.

Benefits payable for any week of disability will be reduced by amounts payable under workmen's compensation and similar laws, social security laws (primary and dependent benefits) and other statutes, any retirement plan, any group insurance plan except a group policy held by Liberty Mutual, and any remuneration earned during such week.

Benefits are payable for each period of disability. Successive periods due to the same or related causes will be considered one period of disability.

Limitations On Insurance Benefits:

Benefits are not payable for disability due to pregnancy or any cause related to pregnancy, any act of declared or undeclared war, attempted suicide or intentionally self-inflicted injury, or for

any disability which does not require throughout its continuance the regular attendance of a physician licensed to prescribe and administer all drugs and to perform all surgical procedures. No benefits will be paid beyond age 65.

SUPPLEMENTARY SALARY BENEFITS are provided by the Company to help fill the gap between insurance benefits and your usual earnings. In cases covered by insurance under the Income Protection Plan, Liberty Mutual pays your full salary for the first week of disability. Then, for as many weeks as you have completed years of service with the Company, it pays one-half the difference between full salary and the insurance benefits.

YOUR COST for the Income Protection Insurance benefits is 33 cents for each $100 of salary. (This is less than one-third of the cost; Liberty Mutual pays the balance for you.) For example:

At Weekly Salary of	Bi-Weekly Salary of	Bi-Weekly Cost (Payroll Deduction)
$ 50.	$100.	$ .33
60.	120.	.40
90.	180.	.59
150.	300.	.99
225.	450.	1.49 (max.)

These rates apply in all states except those where compulsory laws necessitate slight variations. The rates are based on present insurance costs and are subject to change if insurance costs change. If you are absent from work for any reason, other than vacation or paid excused absence, on the date your insurance would otherwise become effective, the insurance will not be effective until you return to work.

Income Protection Insurance is taken by all full time employees as a condition of employment.

SPECIAL STATUTORY DISABILITY BENEFITS apply in California, New Jersey, New York and Rhode Island. Em-

ployees in these states will be insured for state-required benefits the Income Protection plan after completing three months of continuous full-time employment.

If you are employed in one of these states and disability occurs after you are insured for Income Protection, you will receive under the Income Protection plan the difference between the amount paid by statutory accident and sickness insurance and the benefit you would ordinarily receive from the Income Protection plan.

EXHIBIT L TO PLAINTIFF'S BRIEF FOR SUMMARY JUDGMENT

INSURANCE BENEFITS begin with the eighth day of disability. Employees with more than three months but less than five years of continuous full time service will receive a benefit of two-thirds of salary to a maximum of $150.00 per week, for 103 weeks.

Employees with five years or more of continuous full time service will receive a benefit of two-thirds of salary to a maximum of $270.00 per week to age 65.

These benefits are payable during the first year of disability if you are unable to perform the duties of your occupation. Benefits are payable beyond the first year of disability only if you are unable to perform the duties of any occupation.

Benefits payable for any week of disability will be reduced by amounts payable under workmen's compensation and similar laws, social security laws (primary and dependent benefits) and other statutes, any retirement plan, any group insurance plan except a group policy held by Liberty Mutual, and any remuneration earned during such week.

Benefits are payable for each period of disability. Successive periods due to the same or related causes will be considered one period of disability.

Limitations On Insurance Benefits:

Benefits are not payable for disability due to pregnancy or any cause related to pregnancy, any act of declared or undeclared war, attempted suicide or intentionally self-inflicted injury, or for any disability which does not require throughout its continuance the regular attendance of a physician licensed to prescribe and administer all drugs and to perform all surgical procedures. No benefits will be paid beyond age 65.

SUPPLEMENTARY SALARY BENEFITS are provided by the Company to help fill the gap between insurances benefits and your usual earnings. In cases covered by insurance under the Income Protection Plan, Liberty Mutual pays your full salary for the first week of disability. Then, for as many weeks as you have completed years of service with the Company, it pays one-half the difference between full salary and the insurance benefits.

YOUR COST for the Income Protection Insurance benefits is 33 cents for each $100 of salary. (This is less than one-third of the cost; Liberty Mutual pays the balance for you.) For example:

At Weekly Salary of	Bi-Weekly Salary of	Bi-Weekly Cost Payroll Deduction)
$ 50.	$100.	$. 33
60.	120.	.40
90.	180.	.59
150.	300.	.99
225.	450.	1.49 (max.)

These rates apply in all states except those where compulsory laws necessitate slight variations. The rates are based on present insurance costs and are subject to change if insurance costs change. If you are absent from work for any reason, other than vacation or paid excused absence, on the date your insurance would otherwise become effective, the insurance will not be effective until you return to work.

Income Protection Insurance is taken by all full time employees as a condition of employment.

SPECIAL STATUTORY DISABILITY BENEFITS apply in California, New Jersey, New York and Rhode Island. Employees in these states will be insured for state-required benefits from the first day of employment. You still become eligible for the Income Protection plan after completing three months of continuous full-time employment.

If you are employed in one of these states and disability occurs after you are insured for Income Protection, you will receive under the Income Protection plan the difference between the amount paid by statutory accident and sickness insurance and the benefit you would ordinarily receive from the Income Protection plan.

EXHIBIT M TO PLAINTIFF'S BRIEF FOR SUMMARY JUDGMENT

INSURANCE BENEFITS begin with the eighth day of disability. Employees with more than three months but less than five years of continuous full time service will receive a benefit of two-thirds of salary to a maximum of $150.00 per week, for 103 weeks.

Employees with five years or more of continuous full time service will receive a benefit of two-thirds of salary to a maximum of $270.00 per week to age 65.

These benefits are payable during the first year of disability if you are unable to perform the duties of your occupation. Benefits are payable beyond the first year of disability only if you are unable to perform the duties of any occupation.

Benefits payable for any week of disability will be reduced by amounts payable under workmen's compensation and similar laws, social security laws (primary and dependent benefits) and other statutes, any retirement plan, any group insurance

plan except a group policy held by Liberty Mutual, and any remuneration earned during such week.

Benefits are payable for each period of disability. Successive periods due to the same or related causes will be considered one period of disability.

Limitations On Insurance Benefits:

Benefits are not payable for disability due to pregnancy or any cause related to pregnancy, any act of declared or undeclared war, attempted suicide or intentionally self inflicted injury, or for any disability which does not require throughout its continuance the regular attendance of a physician licensed to prescribe and administer all drugs and to perform all surgical procedures. No benefits will be paid beyond age 65.

SUPPLEMENTARY SALARY BENEFITS are provided by the Company to help fill the gap between insurance benefits and your usual earnings. In cases covered by insurance under the Income Protection Plan, Liberty Mutual pays your full salary for the first week of disability. Then, for as many weeks as you have completed years of service with the Company, it pays one-half the difference between full salary and the insurance benefits.

YOUR COST for the Income Protection Insurance benefits is 33 cents for each $100 of salary. (This is less than one-third of the cost; Liberty Mutual pays the balance for you.) For example:

At Weekly Salary of	Bi-Weekly Salary of	Bi-Weekly Cost Payroll Deduction)
$ 50.	$100.	$ .33
60.	120.	.40
90.	180.	.59
150.	300.	.99
225.	450.	1.49 (max.

These rates apply in all states except those where compulsory laws necessitate slight variations. The rates are based on pres-

ent insurance costs and are subject to change if insurance costs change. If you are absent from work for any reason, other than vacation or paid excused absence, on the date your insurance would otherwise become effective, the insurance will not be effective until you return to work.

Income Protection Insurance is taken by all full time employees as a condition of employment.

SPECIAL STATUTORY DISABILITY BENEFITS apply in California, Hawaii, New Jersey, New York and Rhode Island. Employees in most of these states will be insured for state-required benefits from the first day of employment. You still become eligible for the Income Protection plan after completing three months of continuous full-time employment.

If you are employed in one of these states and disability occurs after you are insured for Income Protection, you will receive under the Income Protection plan the difference between the amount paid by statutory accident and sickness insurance and the benefit you would ordinarily receive from the Income Protection plan.

IN THE UNITED STATES DISTRICT COURT

* * (Caption—72-169) * *

AFFIDAVIT

COMMONWEALTH OF PENNSYLVANIA }
COUNTY OF ALLEGHENY } SS.

Before Me, the undersigned authority, personally appeared Sandra Wetzel, who being duly sworn according to law, deposes and says that she is one of the plaintiffs in the above-captioned action and that she knows that the documents annexed hereto as Exhibits "A" and "B" are copies of the charges filed by her and Mari Ross with the Equal Employment Opportunity Commission against Liberty Mutual Insurance Company.

/s/ SANDRA WETZEL

Sworn to and subscribed before me this 31st day of October, 1973.

/s/ JOYCE E. SMITH
Notary Public

Joyce E. Smith, Notary Public, Pittsburgh, Allegheny Conuty, Pa. My commission expires April 18, 1977.

CHARGE OF DISCRIMINATION

(If you have a complaint, fill in this form and mail it to the Equal Employment Opportunity Commission's Regional Office in your area. In most cases, a charge must be filed with the EEOC within a specified time after the discriminatory act took place. IT IS THEREFORE IMPORTANT TO FILE YOUR CHARGE AS SOON AS POSSIBLE.

This form is to be used only to file a charge of discrimination based on RACE, COLOR, RELIGION, SEX, or NATIONAL ORIGIN.

(PLEASE PRINT OR TYPE)

Case File No. TCLI 2133

1. Your Name (Mr., Mrs., Miss) Mrs. Sandra Wetzel

   indicate Phone Number 412-833-5305

   Street Address Dorchester Dr. Apt. 208

   City Pittsburgh State Pa. Zip Code 15241

2. Was the Discrimination Because of: (Please check one)

   Race or Color ☐ Religious Creed ☐

   National Origin ☐ Sex ☒

3. Who discriminated against you? Give the name and address of the employer, labor organization, employment agency and/or apprenticeship committee. If more than one, list all.

   Name Liberty Mutual Insurance Co.

   Street address 717 Liberty Ave.

   City Pittsburgh State Pa. Zip Code 15222

   AND (other parties if any) Home Office 378 Stuart St. Boston, Mass. 02117

(Stamp) [Received E. E. O. C. Cl. Reg. Office]

May 17, 1971

9 AM

4. Have you filed this charge with a state or local government agency?

   Yes ☒ When 5 11 71 No ☐

   month day year

5. If your charge is against a company or a union, how many employees or members? Under 25 ☐ Over 25 ☒

6. The most recent date on which this discrimination took place:

   Continuous since date of employment

   Month Day Year

7. Explain what unfair thing was done to you. How were other persons treated differently? (Use extra sheet if necessary.)

   I am a claims representative investigating industrial accidents. At Liberty Mutual only women may be claims representatives and only men may be adjusters. Both investigate accidents. The men travel outside the office and the women conduct their investigations by telephone in the office. Both have the same educational backgrounds.

   The men participate in a 6 week training program while the women are trained only when a supervisor has time.

   The work and responsibilities of the men and women are essentially the same but the pay scale differs by several thousand dollars. The men are given company cars and expense accounts to cover travel expenses in addition to the difference in base salary.

   The adjusters have the opportunity of being promoted to supervisor after several years with the company but there is little opportunity for women as the company has traditionally made only men supervisors.

8. I swear or affirm that I have read the above charges and that it is true to the best of my knowledge, information and belief.

   Date 5-14-71 SANDRA WETZEL

   (Sign your name)

Subscribed and sworn to before me this 14 day of May, 1971

BERNADETTE M. WILLIAMS (name) Notary Public (Title)

If it is difficult for you to get a Notary Public to sign this, sign your own name and mail to the Regional Office. The Commission will help you to get the form sworn to.

(Stamp) Bernadette M. Williams, Notary Public, Pittsburgh, Allegheny County. My commission expires Mar. 11, 1972.

Form App.: Bur. of Budget—No. 124-R0001

Form EEOC-5(Rev.7-68)

CHARGE OF DISCRIMINATION

(If you have a complaint, fill in this form and mail it to the Equal Employment Opportunity Commission's Regional Office in your area. In most cases, a charge must be filed with the EEOC within a specified time after the discriminatory act took place. IT IS THEREFORE IMPORTANT TO FILE YOUR CHARGE AS SOON AS POSSIBLE.

This form is to be used only to file a charge of discrimination based on RACE, COLOR, RELIGION, SEX, or NATIONAL ORIGIN.

Case File No. TCLI 2132

(Please Print or Type)

1. Your Name (Mr., |Mrs.|, Miss) Mari B. Ross
   Phone Number 412 276-1649
   Street Address 1308 Pennsbury Blvd. S.
   City Pittsburgh State Penna. Zip Code 15205
2. Was the Discrimination Because of: (Please check one)
   Race or Color ☐ Religious Creed ☐
   National Origin ☐ Sex ☒
3. Who discriminated against you? Give the name and address of the employer, labor organization, employment agency and/or apprenticeship committee. If more than one, list all.
   Name Liberty Mutual Insurance Company
   Street address 378 Stuart St.
   City Boston State Mass. Zip Code 02177
   And (other parties if any) Local address 717 Liberty Ave. Pitt., Pa. 15222

(Stamp) [Received E. E. O. C. Cl. Reg. Office]
May 17, 1971
9 AM

4. Have you filed this charge with a state or local government agency?

   Yes ☒ When 5 month 11 day 71 year No ☐

5. If your charge is against a company or a union, how many employees or members? Under 25 ☐ Over 25 ☒

6. The most recent date on which this discrimination took place:

   Month Day Year

   Continuing since date of employment

7. Explain what unfair thing was done to you. How were other persons treated differently? (Use extra sheet if necessary.)

   1. During interview for position as claims representative was subjected to questions regarding marital situation and birth control.
   2. Once hired was left out of training program, and required to learn job on the desk.
   3. As a claims representative, I do comparable work to an adjuster, for a minimum of $2,600.00 less, than an adjuster receives.
   4. Because Liberty Mutual does not hire women adjusters there is no chance for promotion to supervisor.

8. I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

   Date 5-14-71 MARI B. ROSS
   (Sign your name)

   Subscribed and sworn to before me this 14 day of May 1971
   BERNADETTE M. WILLIAMS (Name) Notary Public (Title)

   If it is difficult for you to get a Notary Public to sign this, sign your own name and mail to the Regional Office. The Commission will help you to get the form sworn to.

Form App.: Bur. of Budget—No. 124-R0001

Form EEOC-5(Rev.7-68)

IN THE UNITED STATES DISTRICT COURT

* * (Caption—72-169) * *

RESPONSE OF DEFENDANT TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

The plaintiffs in seeking partial summary judgment in this case[1] claim that no genuine issue of fact exists as to whether the defendant discriminated against females in filling the position of claims adjuster and positions above it; that no genuine issue of fact exists as to whether the defendant discriminated against females in filling the position of claims adjuster and no genuine issue of fact exists as to whether the defendant discriminated against female employees with respect to its employment policies relating to pregnancy and income protection.

In this response defendant will show that there are genuine issues of fact or that there is disagreement concerning the inference to be taken from the facts as to whether it discriminated against females in filling the position of claims adjuster and positions above it and thus the motion for summary judgment must be denied; that there are genuine issues of fact as to whether or not the defendant discriminated against females in filling the position of claims adjuster and thus the motion for summary judgment must be denied, and that this Honorable Court must dismiss that portion of the complaint relating to alleged discrimination in employment policies relating to pregnancy and salary continuation because it is prematurely before

1. Numerous allegations in the complaint are not discussed in plaintiffs' motion presumably because the plaintiffs concede that they involve factual disputes and thus are prevented from consideration in a motion for summary judgment. For example, one such issue is the allegation that the position of claims representative requires for its performance equal skill, effort and responsibility as that required for the position of claims adjuster and is performed under similar working conditions. See *Brennan* v. *Corning Glass Works,* ..... F. 2d ..... (C. A. 3, June 28, 1973).

the court; but *assuming arguendo* that the court entertains this portion of the complaint, a motion for summary judgment is proper because the defendant's employment policies relating to pregnancy and salary continuation are not in factual dispute *but* the issue of liability must be decided in favor of the defendant because its policies are in compliance with Title VII of the Civil Rights Act of 1964, as amended.

Before responding to the issues raised in the plaintiffs' motion, a comment is warranted on thre plaintiffs' tact in this case which is, of course, abundantly evident in this motion. From the day that the complaint was filed and continuing, counsel for the plaintiffs has unceasingly referred to this case as "a class action" or "the class that the plaintiffs represent" or words to this effect. The record is overwhelmingly clear that no motion to allow this case to proceed as a class action has ever been granted nor has any class ever been certified. The only comments from the court concerning the class aspect of the case is the court's observation that if the case were to proceed as a class action the class could not include persons who had terminated their employment with the defendant prior to the filing of the complaint.[2] That observation, while not a ruling, was a clear recognition of the discretion placed in the District Court to determine whether the class action shall be permitted to proceed at all. Furthermore, neither of the named plaintiffs is in the employ of the defendant at this time and the court must, at some point, determine if there are proper representatives of a class and whether or not those representatives will adequately represent the interests of a class.[3] Furthermore, litigation of even any purported general policy of defendant would inevitably focus in detail on the separate work histories of each plaintiff and each member of the class.

To prevail on a motion for summary judgment, the moving party must clearly demonstrate:

2. Order of September 14, 1972.
3. See Affidavit of Edmund A. Carr, marked as Exhibit A.

1. The absence of a genuine issue of material fact;

2. That all doubt as to the existence of material fact must be resolved against the moving party;[4] and

3. That neither factual inferences should be drawn nor credibility issues resolved in favor of the moving party.[5]

All inferences to be drawn from the underlying facts must be viewed in the light most favorable to the party opposing summary judgment[6] and summary judgment shall not be granted unless the entire record shows a right to judgment so as to leave no room for controversy and establish affirmatively that the adverse party cannot prevail under any circumstances.[7] Furthermore, even though there may be no controversy over the basic facts, summary judgment should not be granted if the parties disagree as to the inferences which may properly be drawn.[8]

* * * * *

B. *The Defendant's Employment Policies Relating to Pregnancy and Salary Continuation*

During the past few years the defendant's policies concerning pregnant female employees have undergone several changes. At all times prior to September, 1970, a female employee who became pregnant could work through her sixth month of pregnancy and was then terminated from employment. If the employee desired reemployment and a position was available, the waiting period for the vesting of benefit plans was waived if

4. *First Pennsylvania Banking and Trust Co.* v. *United States Life Insurance Co.*, 421 F. 2d 959 (C. A. 3, 1969); *Associated Hardware Supply Co.* v. *Big Wheel Distributing Co.*, 355 F. 2d 114 (C. A. 3, 1966); *Chamber* v. *U. S.*, 357 F. 2d 224 (C. A. 8, 1966).
5. 6 Moore's Federal Practice ¶ 56.15.
6. *U. S.* v. *Diebold, Incorporated*, 369 U. S. 654 (1962).
7. *Phoenix Savings and Loan, Inc.* v. *Aetna Casualty and Surety Company*, 381 F. 2d 245 (C. A. 4, 1967).
8. *American Fidelity & Casualty Company* v. *London & Edinburgh Insurance Company*, 354 F. 2d 214 (C. A. 7, 1965).

the employee returned within six (6) months from the date of termination.

In September of 1970, the policy relating to pregnancy was changed to allow any female employee who had been employed for one year to request, in writing, a leave of absence; if a doctor verifies that the employee is, in fact, pregnant, a leave of absence is granted for a period of six months from the last day of work or for a period of three months from the date of delivery, whichever comes first.[22] During the leave of absence the employee continues to accumulate the seniority and the employee returns to work in her old position or a comparable one. During the leave of absence the employee does not receive her salary as is true for any other disability not established by medical evidence.[22a]

The Courts have held "that an individual . . . may not bypass the EEOC and seek direct judicial enforcement of his rights but must file a complaint with the EEOC. The courts have reasoned that Congress intended that the EEOC be given an opportunity to investigate and conciliate charges of discrimination as a jurisdictional prerequisite to litigating those charges in federal court." *Tedford* v. *Airco Reduction, Inc.*, ... F. 2d ..... (C. A. 5, 1972); 4 FEP Cases 7654. Certainly, questions will arise over whether or not the issues raised in an enforcement suit in federal court must be strictly confined to the issues raised in the original EEOC complaint. But here those questions cannot arise because the charge originally filed never even mentioned this aspect of the complaint. Courts have recognized that the policies of the Act favoring informal persuasion and voluntary compliance would be undermined if individuals were given complete freedom to litigate in federal courts allegations of

22. During the period of March 1967 through November 1971 the employee could work through the eighth month of pregnancy. From November, 1971 to the present the employee can work through the entire term of her pregnancy until delivery.

22a. Deposition of Kenneth D. Spaulding, pp. 13-17; correction pp. 2-3.

discrimination which were never presented to the EEOC for investigation and conciliation. *Edwards* v. *North American Rockwell Corp.*, 291 F. Supp. 199 (1968); *Kirsey* v. *Legg, Mason and Company, Inc.*, ... F. Supp. ..... (1973); *Carter* v. *Holt-Williamson Manufacturing Company*, ... F. Supp. ..... (1969); *Smith* v. *North American Rockwell Corp.*, ... F. Supp. ..... (1970).

Because of the above authority and the failure of the plaintiffs to follow the proper procedure that portion of the complaint alleging discrimination regarding the defendant's policies on pregnancy and salary continuation must be dismissed.

2. *Assuming arguendo, that the Court does not dismiss the Complaint, Summary Judgment should be granted with a determination that the Defendant's employment policies regarding pregnancy and salary continuation do not discriminate against its female employees on the basis of sex*

A. *Pregnancy*

There can be little doubt that the defendant's present policy of allowing a pregnant female employee the opportunity to work through the entire term of her pregnancy until delivery and then giving her a leave of absence with the right to return to her same or *similar* position is in total compliance with Title VII of the Civil Rights Act of 1967, as amended, and with the Guidelines on Discrimination Because of Sex issued by the United States Equal Opportunity Commission (§ 1604.10). Furthermore, for all practical purposes the current policy has been in effect since September, 1970 which, quite possibly, makes the defendant a leader in the County as concerns the granting of this benefit. This issue (along with that concerning salary continuation presents a case of first impression for the Third Circuit.[24] This case is of such importance that the United

24. A similar case is pending in the United States District Court for the District of Virginia but it is likely that a decision will issue in

States Equal Employment Opportunity Commission has intervened as *Amicus Curiae*. Surely though, the EEOC must come to this Court with "tongue in cheek". The EEOC, which was created by enactment of Title VII of the Civil Rights Act of 1964 did not issue any guidelines on pregnancy until March 1972 and even today the Commission has made no effort to enforce the guidelines nor has it brought action against any employer concerning this matter. The Commission, in its brief, impliedly concedes that the defendant's policy since 1970 is in compliance with the Act but still discriminates because a female employee on maternity leave must return on a date certain. Nevertheless, the Commission admits that only a "few women are likely to be unable to return to work after the birth of the child because of physical disability" and further the Guideline only speaks of termination caused by an employment policy under which "insufficient or no leave is available." The argument of the EEOC is untenable inasmuch as the defendant's rule is lawful and must apply uniformly to all. If exceptions for the unusual case apply here, then the defendant will be susceptible to charges of discrimination if it doesn't grant exceptions to all of its policies; further the EEOC has never said what insufficient leave is.

While the instant motion only involves the matter of liability it seems pertinent to comment concerning the defendant's policy relating to pregnancy from the enactment of Title VII of the Civil Rights Act of 1964 until September, 1970. During that period of time there were no guidelines nor court decisions to guide an employer and the defendant, even before the guidelines, assumed its obligation. To require a remedy for any past violation would be punitive and totally unwarranted.[25]

this matter because briefs will not be due there until sometime in September or later (*Gilbert* v. *General Electric Company*, E. D. Va., 142-72R).

25. Back pay awards are not mandatory under Title VII and the Court is mandated to issue "such affirmative action as may be appropriate". *Kober* v. *Westinghouse Electric Corporation*, 460 F.

B. *Salary Continuation*

Should an employee who voluntarily absents himself or herself from employment receive his or her wages (or a portion thereof) during that absence? The plaintiffs and *amicus* claim that when that absence is caused by reason of pregnancy to a female employee then the wages shall be paid.[26] Pregnancy is a chosen status which normally results from the *voluntary* union of two individuals with consequences that affect the welfare of society. Because it is a planned occurrence, as opposed to an accident, it is wholly without the scope of traditional disability coverage. As opposed to an accident, the pregnant female has voluntarily removed herself from the active work force purely by reason of her own choice; to deny the liability coverage during this period is not to deny it on the bases of sex,[27] but rather on the reason for the absence, i.e., a voluntary reason. To require an employer, in effect, to subsidize the birth of the children of its employees is not only an unreasonable burden but totally out of step with reality.

If the plaintiffs and *amicus* desire that pregnant female employees of the defendant receive their wages while on leave of absence, then the plaintiffs shall convince the *amicus* to sponsor appropriate legislation either to the state or federal government.[28] Most Western nations, other than the United States, provide extensive health and/or disability coverage as part of an overall program of maternity benefits for working

2d 1128 (C. A. 3, 1973); *Fogg* v. *New England Telephone & Telegraph Company*, 5 FEP Cases 7 (1972).

26. Neither the plaintiff nor *amicus* explains the discrimination that will result to employees who do not become pregnant.

27. *Cohen* v. *Chesterfield County School Board*, ... F. 2d ..... (C. A. 4, 1973), *cert. granted*, 41 U. S. L. W. 3565.

28. It is probably wishful thinking to suggest this inasmuch as the plaintiffs' attitude, to date, has been predicated by what they can get out of this case, as opposed to what good they may do.

women.[29] The broad type of "social legislation" fostered by the plaintiffs and *amicus* in this case is before the wrong forum.[30]

The guidelines of the Equal Employment Opportunity Commission are not the law. Admittedly, the Commission because of its "expertise" is entitled to be heard in those areas where it has expertise.[31] But here, it merely issued the Guidelines and has done absolutely nothing to justify them or to show what they say is accurate. In fact, as mentioned above, the Commission has not sought enforcement of the Guidelines in the "salary continuation" area and is relying upon this suit for judicial enforcement.

If the Court determines that the plaintiffs' position is correct, the Court should not require the defendant to pay to its female employees who were granted leave of absence in order to have the children any back pay. Not only will this unjustly enrich the plaintiffs but it would make the defendant the whipping boy for years of vacillation by the EEOC and grant retroactive effect to a guideline where there is no indication whatsoever that the EEOC desired that it be enforced retroactively.

Respectfully submitted,

/s/ KALVIN M. GROVE
Kalvin M. Grove
LEDERER, FOX and GROVE
111 West Washington Street
Chicago, Illinois 60602
ROBERT A. PENNEY
175 Berkeley Street
Boston, Mass. 02226
CLEM R. KYLE
717 Liberty Avenue
Pittsburgh, Pennsylvania 15222
Attorneys for Liberty Mutual Insurance Company, Defendant

Dated: August 31, 1973

29. 7 Harvard Civil Rights Law Review, 760, 788.
30. Dissenting opinion of Judge Williams in *Aiello* v. *Hansen.*
31. *Griggs* v. *Duke Power Co.*, 401 U. S. 424 (1971).

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing Response of Defendant to Plaintiffs' Motion for Summary Judgment was mailed on August 31, 1973 to the following:

Howard A. Specter, Esq.
Litman, Litman, Harris and Specter, P. A.
Grant Building
Pittsburgh, Pa. 15219

Robert F. Stone, Esq.
Fine, Perlow & Stone
3025 Mellon Bank Building
Pittsburgh, Pa. 15219

James F. Bennett, Esq.
Equal Employment Opportunity Commission
Federal Building
1000 Liberty Avenue
Pittsburgh, Pa. 15222

/s/ KALVIN M. GROVE
Kalvin M. Grove

[illegible] ADDRESS U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION 1000 LIBERTY AVE. SUITE 1095A PITTSBURGH, PA 15222	IMPORTANT See Notice of Non-retaliation on reverse.
[illegible] Chief Executive Officer Liberty Mutual Ins. Company 717 Liberty Avenue Pittsburgh, PA	[illegible] TPI2-0303 DATE OF VIOLATION Continuing PLACE OF VIOLATION Mailing Address

NOTICE OF CHARGE OF EMPLOYMENT DISCRIMINATION

You are hereby notified that a charge of employment discrimination under Sec. 706 of the Civil Rights Act of 1964, 42 U.S.C. Sec. 2000e-5, as amended, has been filed against you. Information relating to the date, place, and circumstances of the alleged unlawful employment practice or practices is provided herein. This notice does not contemplate that the name of the person having filed the charge be made available to you.

We cannot say what part, if necessary at this time. However, if you wish to submit any information in position, it will be made a part of the file and will be considered at the time we investigate the charge. Information submitted cannot be made a part of the record [illegible] Section 1602.14 of the Commission's Rules, which requires the participation of all relevant personnel on any party this charge is received.

We will investigate this charge as promptly as possible. However, our heavy backlog of pending work makes it impossible to say at this time when we will contact you again. We hope that you will hold any questions about the time for investigation in abeyance until we are able to begin the investigation.

[illegible]	☐	☒	☐
[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]
DATE	E.E.O.C. District Director		

EEOC FORM 131 — RESPONDENT'S COPY

EXHIBIT II. - -

BEST COPY AVAILABLE

NOTICE OF INSTALLATION REQUIREMENT

Section 701(a) of the Civil Rights Act of 1964, as amended, states:

It shall be an unlawful employment practice for an employer to discriminate against any of his employees or applicants for employment, for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against any individual because of his race, color, religion, sex, or national origin, or to classify or refer for employment any individual on the basis of his race, color, religion, sex, or national origin.

Persons have charges of employment discrimination are advised of this Non-Discrimination Requirement and invited to write to the Equal Employment Opportunity Commission if any action at all is taken by this

William H. Brown III, Chairman

BEST COPY AVAILABLE

IMPORTANT
See Notice of Non-retaliation on reverse.

Chief Executive Officer
Liberty Mutual Insurance Co.
717 Liberty Avenue
Pittsburgh, PA

Continuing

Mailing Address

NOTICE OF CHARGE OF DISCRIMINATION

You are hereby notified that a charge of employment discrimination under Sec. 706 of the Civil Rights Act of 1964, 42 U.S.C. Sec. 2000e-5, as amended, has been filed against you. Information relating to the date, place, and circumstances of the alleged unlawful employment practice or practices is reflected below. This Act does not contemplate that the agency of the person bringing the charge be made available to you.

No action on your part is necessary at this time. However, if you wish to submit any information in writing, it will be made a part of the file and will be considered at the time we investigate this charge. Anything communicated to EEOC may be made a part of the record. Section 1602.14 of the Commission's regulations requires the preservation of all relevant personnel records until this charge is resolved.

We will investigate this charge as soon as possible. However, our heavy backlog of meritorious work makes it impossible to predict when we will complete your case. We hope that you will bear with us patiently and cooperate in whatever way you can while we are trying to begin the investigation.

EEOC Pittsburgh Area Office

FORM 131 RECOMMENDED 6/77

EXHIBIT I

BEST COPY AVAILABLE

NOTICE OF NONDISCRIMINATION REQUIREMENT

Section 703(a) of the Civil Rights Act of 1964, as amended, states:

[illegible]

Persons filing charges of employment discrimination are advised of this Commission's procedures which are designed to resolve the Equal Employment [illegible]

William H. Brown III, Chairman

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BEST COPY AVAILABLE

Your Placement Director will be glad to arrange a personal interview, or write to:

Administrative Manager
Liberty Mutual Insurance Company
at one of the following offices:

1718 Peachtree Road, N.W.
Atlanta, Georgia 30302

175 Berkeley Street
Boston, Massachusetts 02117

1 South Wacker Drive
Chicago, Illinois 60606

3010 Maple Avenue
Dallas, Texas 75219

10 Rockefeller Plaza
New York, New York 10020

15 Esso Road, Bala-Cynwyd
Philadelphia, Pennsylvania 19004

717 Liberty Avenue
Pittsburgh, Pennsylvania 15222

216 Pine Street
San Francisco, California 94104

783 Don Mills Road
Don Mills, Ontario, Canada

the company that stands by you

BRANCH OFFICE CLAIMS MANAGER

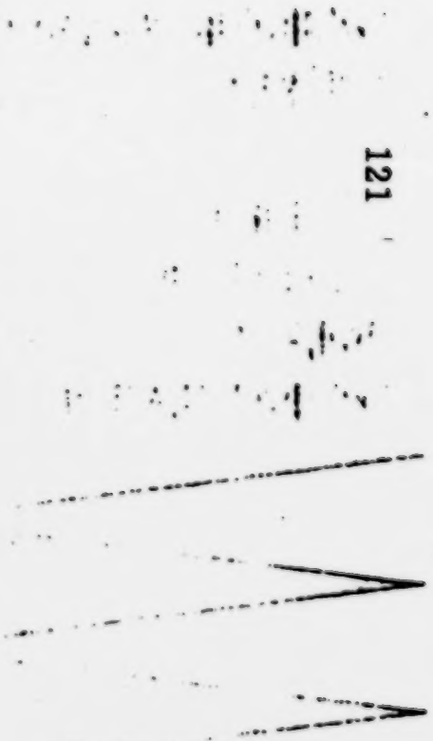

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EXHIBIT A

All Claims Department promotions are from within our own department. Liberty Mutual's dynamic growth has averaged 10 to 11 percent year after year. Our growth rate ensures us to maintain or increase the rate of promotions. The Company's growth also gives a most favorable climate for the individual's growth. On the average, three to five years experience in the entry position is needed for success and the first promotion is usually from Adjuster to Supervisor, the Claims Department's first level of management. Successful Supervisors are considered for promotion to all other management levels.

Advancement for those who start as Claims Adjusters is not confined to the Claims Department. Because Claims is the Company's largest single department and has the largest number of college graduates, we are frequently called upon to furnish able people to handle responsible positions in other departments of the Company.

We are glad to interview and hire regardless of service. Most of the men hired prior to military service have returned to continue their careers with us. Many of the men entering on active duty immediately after graduation have also returned as a direct result of our original campus visit.

We recommend, in fact we strongly urge, that seniors facing early military service schedule campus interviews in order to learn all they can about career opportunities in which they may be interested.

Are you the right man?

If this presentation touches upon your interests and concepts of job satisfaction, and if you believe the challenges of Claims work are in tune with your background and capabilities, we would like to talk to you.

The occupations discussed in this brochure are considered male oriented. This brochure is not, however, intended to exclude or discourage female applicants.

BEST COPY AVAILABLE

HOME OFFICE EXAMINERS
DIVISION

DIVISION
CLAIMS MANAGER

These are the chief managerial positions in Liberty Mutual's Claims Department. All men occupying these positions were once Claims Adjusters with Liberty Mutual.

They attained their positions of responsibility by training, ability, desire and performance.

You can attain one or all of these positions in exactly the same way.

Our formal Training Program is designed to equip you with the principles and techniques for the right start. If you have motivation, learning ability, interest and competitive drive, you'll enjoy your entry job and try to advance beyond it.

Are you the right man?

That depends on a number of things, the most important of which is a self-analysis of your interests, ambitions, capabilities, concepts of job-satisfaction and temperament.

Let's take a close look at your entry job. What is the Claims Adjuster's objective? What are his duties? How does he perform them? How is he trained?

BEST COPY AVAILABLE

OBJECTIVE:
His objective is to furnish our policyholders with the protection promised in the policies they purchased. When our policyholders have accidents, they expect this protection to take the form of prompt payment of valid claims and prompt denial of invalid claims.

DUTIES:
The Claims Adjuster is, first of all, Liberty's fact-finder. His first duty when he is assigned an accident investigation is to determine the cause of the accident as well as the scope and extent of the accident. If payment is warranted, he negotiates prompt settlement with the injured person, or his attorney. It takes men of sound judgment to spend the Company's money wisely. This is the Claims Adjuster's most important responsibility.

PERFORMANCE:
OBTAINING THE FACTS
The Adjuster is a salaried representative working almost entirely outside the office. Many of his calls are at the homes of people he has never seen before and may never see again. He must seek facts wherever and whenever they are best available, and that usually means at the convenience of the stranger possessing the facts.

Street intersections, construction job sites, waterfront operations, fires, burglary and hold-up scenes, explosions—these demand his attention throughout each day and constitute his "office" of the moment.

Many professional people must also be interviewed. To determine the cause of an accident, technical explanations are often needed. The opinions of other professional people—from physician to mechanic—will be sought to determine as precisely as possible the after-effects of the accident.

To obtain necessary facts from lay witnesses and the opinions and advice of professional people, the Adjuster must have the ability to "speak the language" of all.

EVALUATING THE FACTS
Sound, practical judgment must be used by the Adjuster in evaluating the facts and professional opinions he has obtained. He must decide whether or not he will voluntarily pay any money on each particular case and, if so, how much of the Company's money he is justified in paying. Each case is different and the facts of each determine how much, if anything, should be paid.

SKILLFUL NEGOTIATION
Successful denials of payments and skillful negotiations of payments at figures consistent with the facts do not just happen. They are intelligently planned and convincingly executed with good judgment. Furthermore, the Adjuster must explain to the injured person why the amount we are willing to pay is proper in view of the facts and circumstances. An amicable settlement calls for the utmost in sincerity, tact, diplomacy and persuasion.

TRAINING:
Insurance is a complex subject; however, no man presently holding a managerial position in Liberty's Claims Department had any claims training before he joined us.

Each Liberty Adjuster starts his career with an Orientation and Principles course at one of the Claims Department's eight Training Centers, located in major metropolitan areas of the country. There he spends eight weeks in both classroom and on-the-street training in techniques before he reports to his office of assignment. Training for the Liberty Adjuster continues throughout his career.

Advanced Training Seminars provide broader technical knowledge. The individualized guidance of the Supervisor and all these training media combine to groom the Liberty Adjuster for future management positions.

SALARY:
Your Placement Director can tell you our current starting salary. All increases are based on demonstrated merit and progress in learning to be a successful Adjuster—while you are filling the entry position and subsequent positions to which you are promoted. The first opportunity for a merit increase will be at the successful completion of the 3 months training period. A second opportunity will occur after 12 months employment, and thereafter salary reviews, upon which merit increases are based, will take place annually. Salary increases accompany all promotions.

BEST COPY AVAILABLE

DIVISION

BRANCH OFFICE
CLAIMS MANAGER

BEST COPY AVAILABLE

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Administrative Manager
Liberty Mutual Insurance Company
at one of the following offices:

1718 Peachtree Road, N.W.
Atlanta, Georgia 30309

175 Berkeley Street
Boston, Massachusetts 02117

1 South Wacker Drive
Chicago, Illinois 60606

3200 Maple Avenue
Dallas, Texas 75219

10 Rockefeller Plaza
New York, New York 10020

15 East Road, Bala-Cynwyd
Philadelphia, Pennsylvania 19004

717 Liberty Avenue
Pittsburgh, Pennsylvania 15222

216 Pine Street
San Francisco, California 94104

1200 Eglington Ave. E
Don Mills 402, Ontario, Canada

the company that stands by you

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EXHIBIT B

ICE
RESIDENT

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BEST COPY AVAILABLE

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[redacted]

Chief Executive Officer
Liberty Mutual Ins. Company
175 Liberty Avenue
Pittsburgh, PA

Equal Employment Opportunity Commission

TPI2-0303

Continuing

Mailing Address

NOTICE OF CHARGE OF EMPLOYMENT DISCRIMINATION

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

DATE

E.E.O.C. District Director

EEOC FORM 131

RESPONDENT'S COPY

EXHIBIT H- - -

BEST COPY AVAILABLE

[illegible]

Section 703(a) of the Civil Rights Act of 1964, as amended, states:

[illegible]

Persons filing charges of employment discrimination are protected by the Non-Retaliation Provisions of the Act as well as by the Equal Employment Opportunity Commission's [illegible]

[illegible]

William H. Brown III, Chairman

BEST COPY AVAILABLE

[redacted]	IMPORTANT See Notice of Non-retaliation on reverse.
Chief Executive Officer [redacted] Mutual Insurance Co. 717 [redacted] Avenue Pittsburgh, PA	FUTURE CORRESPONDENCE WILL REFER TO NUMBER SHOWN Continuing PLACE OF VIOLATION Mailing Address

NOTICE OF CHARGE OF DISCRIMINATION

[redacted] hereby notified that a charge of discrimination under Sec. 706 of the Civil Rights Act of 1964, as amended, has been received by the Equal Employment Opportunity Commission alleging that [redacted] has engaged in unlawful employment practices on the basis of [redacted]. The Act does not contemplate that the name of the person making the charge be made known to you.

No action on your part is necessary at this time. However, if you wish to submit any information in response, it will be made a part of the file and will be considered at the time we investigate the charge. Such information should be submitted promptly and must be made a part of the record. Under Section 706 of the Civil Rights Act, the burden of proof rests with the respondent to sustain its position. Therefore, failure to submit requested information or to participate in conference, conciliation or persuasion may result in a determination that reasonable cause exists to believe that the charge is true.

[redacted] will investigate this charge as soon as possible. However, due to the backlog of cases now pending before the Commission, it may be some time before we will contact you again. We hope that it will be possible to settle or adjust this case. If we are able to do so, we will only require that you agree to a settlement acceptable to the Commission. Further processing of your charge will be deferred for sixty days to permit such efforts to be undertaken. If we are unable to resolve the charge, you will be notified that conciliation has failed. Thereafter, a decision will be made as to whether or not suit should be filed on your behalf. You will be notified of that decision as well.

If you have any questions, you may write or visit the Equal Employment Opportunity Commission, [redacted] Area Office, [redacted]. Please call [redacted] if you wish to discuss an appointment to visit the office. When writing or calling the Commission, please refer to the charge number shown above.

You should keep a record of all facts and events relating to the charge, including the circumstances under which you learned of it, and the dates of occurrences. You should also preserve any written materials pertaining to the charge, such as newspaper or magazine articles, boards, employment applications, and similar documents. Any person who willfully fails to retain or preserve records required to be kept or preserved by Title VII of the Civil Rights Act of 1964, as amended, or by regulations of the Commission, or who willfully falsifies, conceals or destroys any such records with intent to defeat the purposes of Title VII, may be subject to criminal prosecution.

[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]

EEOC District Director

EEOC FORM [redacted] 131 BEST AVAILABLE COPY

EXHIBIT I

BEST COPY AVAILABLE

IN THE UNITED STATES DISTRICT COURT

* * (Caption—72-169) * *

OPINION

WEBER, *J.* January 9, 1974

The two named Plaintiffs on behalf of themselves and all other female technical employees employed in Defendant Liberty Mutual Insurance Company's Claims Department (the Company) have filed a Complaint charging that the Company discriminated against women in hiring, job classification, promotions, and in the compensation and job benefits they received for the jobs they were allowed to hold.

The Representative Plaintiffs are Sandra Wetzel, a woman, who was hired by Defendant Company as a "Claims Representative" in July 1967, and Mari Ross, who was hired by Defendant Company as a "Claims Representative" in September 1967. Both allege that they suffered discrimination by reason of their sex because of the hiring, job classification, pay differential, and employment benefit policies of Defendant Company, and that these policies were applied to all female technical employees in the Defendant's Claims Department throughout the nation where Defendant Company did business.

The court determined that the action should proceed as a class action covering all female technical employees in the Defendant's Claims Department in the entire geographical area where the Company did business. The class as now defined includes all such employees who were hired or working for the Company in its Claims Department since July 2, 1965, the effective date of Title VII of 42 U. S. C. 2000e et seq., the Equal Employment Opportunity Act of 1972.

Extensive discovery has been employed and the Plaintiffs now file a motion for partial summary judgment on certain of the issues raised. It is agreed between the parties that one of the

issues, designated the "equal pay" issue, is not susceptible of summary judgment at this time because there are disputed issues of fact with respect to whether or not the work performed by women in the job classification of "Claims Representative" was equal to the work performed by men in the job classification of "Claims Adjuster" for which they were paid a substantially higher salary. However, the Plaintiffs at this time allege that there is no genuine issue as to any material fact with respect to the job classification under which men and women were originally hired as technical employees in the Claims Department, with regard to the promotional policy within the Claims Department, and with regard to the pregnancy and maternity leave policies of the Company including the disability income protection plan of the Company as applied to women on maternity leave.

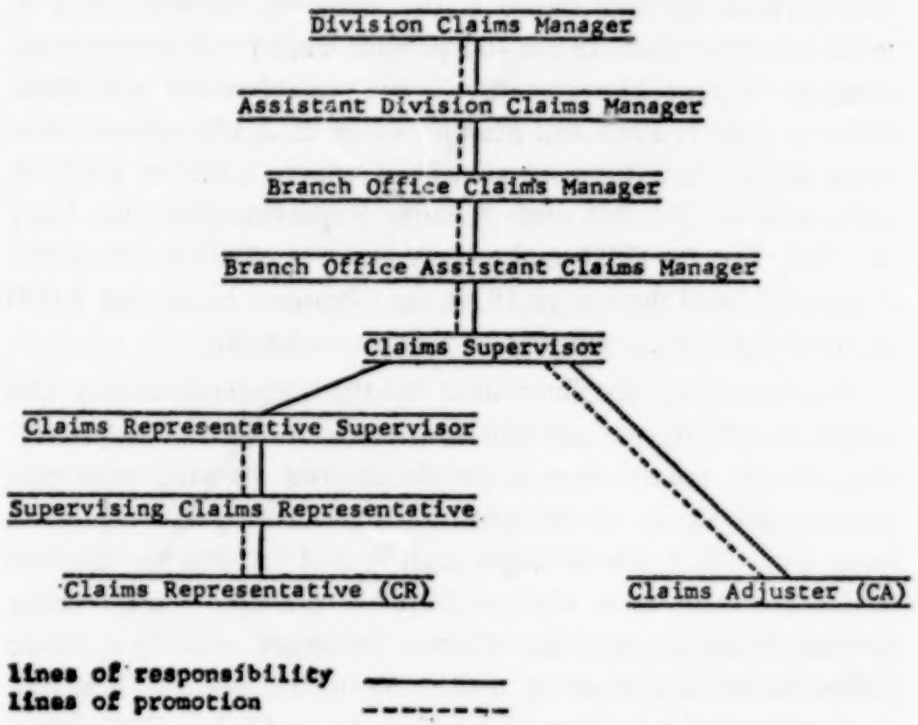
The key point of discrimination set forth in the pleadings, evidentiary material and briefs of the plaintiffs, and the *amicus curiae* brief of the United States Equal Employment Opportunity Commission is the hiring policy of the Company, since original assignment in effect determines the employee's future chances of promotion within the Company. Because the Company in its Claims Department promotes from its own ranks, the opportunity for advancement depends upon the entry level position to which an employee is assigned upon first being employed by the Company's claim division. Promotion to the higher rank of Claims Supervisor was limited to persons holding the position of Claims Adjuster and throughout most of the period under consideration through 1970 was limited to male employees because all Claims Adjusters were male. On the other hand the entry level classification in the Company's Claims Department of "Claims Representative" was exclusively limited to women throughout most of the period under consideration here. There was no avenue of promotion from those personnel classified as "Claims Representatives" on entry into the Company in its Claims Division.

There were two higher supervisory positions in the "Claims Representative" category, that of "Supervising Claims Representative" and "Claims Representative Supervisor," but no promotion beyond the second rank. Although the line of responsibility from "Claims Representative Supervisor" runs to "Claims Supervisor" there is no similar line of promotion because all "Claims Supervisors" are drawn from the ranks of "Claims Adjuster."

The lines of responsibility and promotion are illustrated as follows:

CLAIMS DEPARTMENT - TECHNICAL EMPLOYEES

LINES OF RESPONSIBILITY AND PROMOTION



The same educational requirements were in 1965 and thereafter until 1970 with respect to the hiring of "Claims Adjusters" and "Claims Representatives", a college degree. No prior experience in the insurance business was required and in fact the Company did not hire persons who had worked for other insur-

ance companies in its entry level positions in the Claims Department.

Although the Defendant Company had employed "Claims Adjusters" for a long period of time the position of "Claims Representative" was created in mid-1965. The position was created when the Company had decided to handle more of its claims work from inside its offices. A recruiting brochure for this position was prepared and circulated through college placement offices and employment agencies. The qualification for the "Claims Representative" position included a college degree. The recruiting brochure is entirely female oriented. Its title page bears the caption and picture identifying the position as a job fit for a queen. It shows women in its illustrations of persons performing their duties in this capacity. Between July 1, 1965 and the end of 1966, 401 persons were hired for the positions of "Claims Representative", not one of which was male. Between July 1, 1965 and March 17, 1972, 2,329 persons were hired as "Claims Representatives" of which 2,302 or 98.84% were women. The first male "Claims Representative" was hired in 1969, four in 1970, and twenty in 1971. During the period from 1965 until the end of 1970, the Company hired over 2,000 "Claims Adjusters", not one of which was female.

The recruiting brochure used by the Company during this period describing the position and duties of "Claims Adjusters" was entirely male oriented, its illustrations showing men performing the duties of the position, and bearing the legend in large type, "Are you the right man?", and reciting the avenues of advancement from Claims Adjuster through Branch Office Claims Manager, Division Claims Manager, Manager Home Office Examiners' Division, and so on up the ladder. The Company promoted to advanced positions in its Claims Department solely from those persons who had served it in the capacity of "Claims Adjuster".

The two Representative Plaintiffs were hired in the position of "Claims Representative" and they have deposed that in answer to their inquiries they were informed that the position of "Claims Adjuster", the beginning of the promotional ladder in the Claims Department, was not available for women. It has been admitted by representatives of the Defendant that the two named Representative Plaintiffs were qualified for the position of "Claims Adjuster" at the time of the original hiring.

It would serve little purpose to recite in detail the great mass of statistical evidence which the Plaintiffs have produced in support of their contention that the two initial entry positions were segregated between male and female applicants, that the educational requirement for both positions was the same, that no prior insurance experience was required for either position, that the functions performed in these positions were very similar, that the pay differential between the positions was substantial, being approximately $2,500 per year greater for the Claims Adjuster, that prior to 1971 no opportunity was given to women "Claims Representatives" to qualify for the position of "Claims Adjuster", and that all promotions to higher positions in the Claims Department were made from the ranks of the exclusively male "Claims Adjuster" classification.

In addition to the statistical evidence which is unrebutted here the Plaintiffs have produced additional supporting evidence of the Company's employment policies with respect to women in the Claims Division. Much of this evidence is in the form of oral testimony and affidavits which may be subject to a question of credibility but a good deal of the supporting evidence is documentary and supports the Plaintiffs' contention of a recognized pattern of treating the male and female employees in the Claims Department differently in respect to recruitment, hiring classifications, promotional opportunities, and salary.

We are not speaking of salary or compensation with respect to the question of whether equal pay was given for the same work but in connection with the entry level salary paid for the two classifications and the salary differential between "Claims

Representatives" of considerable experience and the starting salary which they could receive when openings were finally made available to "Claims Representatives" to become "Claims Adjusters."

Two sections of Fed. R. Civ. P. 56 are applicable to our consideration of Plaintiffs' motion for summary judgment. Fed. R. Civ. P. 56(c) provides in part:

> "The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and the admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact, and that the moving party is entitled to judgment as a matter of law."

and Fed. R. Civ. P. 56(e) which provides in part:

> "When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits, or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him."

The Plaintiffs have relied chiefly on statistical evidence in support of their contention of discriminatory employment policies and in many cases the courts have accepted such evidence in determination of whether Title VII has been violated. *Parham* v. *Southwestern Bell Telephone Co.*, 433 F. 2d 421 [8th Cir. 1970]; *Witherspoon* v. *Mercury Freight Lines, Inc.*, 457 F. 2d 496 [5th Cir. 1972]; *Bing* v. *Roadway Express, Inc.*, 444 F. 2d 678 [5th Cir. 1971]; *Roe* v. *General Motors Corp.*, 457 F. 2d 348 [5th Cir. 1972]. In accordance with the decisions and under the doctrine of *McDonnell Douglas Corp.* v. *Green*, 411 U. S. 792 [1973], once the plaintiff has established a prima facie case by setting forth statistics of this kind the burden is on the employer to sufficiently explain the disparity in hiring; conclusory statements that the employer never discriminated in

hiring is insufficient to satisfy this burden. As stated in *McDonnel*, supra, "The burden then must shift to the employer to articulate some legitimate, non-discriminatory reason for the respondents rejection." (p. 802). We are of the opinion that the Defendant's response to the Plaintiffs' motion for summary judgment fails to address this burden at all, let alone rebut the Plaintiffs' evidence.

The response of the Defendant raises eight issues of defense as follows:

1.

Neither of the named Representative Plaintiffs is currently in the employ of the Defendant. This is not a contested issue of fact. The Plaintiffs admit that both the representative party Plaintiffs have left the employ of Defendant and the question of whether or not their termination from employment was voluntary or forced by discriminatory employment practices of the Defendant is not an issue before us at this time. This is a matter of law concerning standing and it has been held that a former employee may bring an action to enforce rights under this statute claimed to have been infringed. In *Hackett* v. *McGuire Bros. Inc.*, 445 F. 2d 442 [3rd Cir. 1971] this contention was rejected;

> "The national public policy reflected . . . in Title VII . . . may not be frustrated by the development of overly technical judicial doctrines of standing or election or remedies. If the plaintiff is sufficiently aggrieved so that he claims enough injury in fact to present a genuine case or controversy in the Article III sense, then he should have standing to sue in his own right and as a class representative."
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> (pp. 446, 447).

The Circuit Court continued:

> "A person claiming to be aggrieved may never have been an employee of the defendant. Indeed the Act forbids discrimination not only by employers, 42 U. S. C. § 2000e-2(a)(2), but also by potential employers, 42 U. S. C. § 2000e-2(a)(1), by labor organizations 42 U. S. C. § 2000e(2)

> (c) and by employment agencies, 42 U. S. C. § 2000e (2)(b). An aggrieved person obviously is any person aggrieved by any of the forbidden practices.
>
> (pp. 445-446).

An interesting commentary on the argument asserted to this court was made in *Reed* v. *Arlington Hotel Co. Inc.*, 476 F. 2d 721 [8th Cir. 1973]:

> ". . . if this kind of an individual (a discharged employee, not seeking reinstatement) would be prevented from bringing class actions as the rules permit, there would be a windfall for the employer, and when any such matter was coming up, all they would have to do is discharge the employee . . ."
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> (p. 723).

2.

The Defendant argues that the representative party Plaintiffs were offered "Claims Adjuster" status and has filed evidence to this effect. This is not denied by Plaintiffs but they contend that the terms of the offer were unacceptable and were made after the charges of discrimination were filed in this case with the United States Equal Employment Opportunity Commission in 1971. We find this to be a disputed issue of fact which may be relevant to the question of damages of the representative party Plaintiffs, but irrelevant to the question of violation of the statute which is before us. Under all circumstances, it is shown by the evidence that the offer of "Claims Adjuster" status was made long after the effective date of the statute in question, after both representative Plaintiffs had been employed in the position of "Claims Representatives" for several years, and after the filing of the Complaints before the EEOC in this matter.

3.

Defendant claims that there is a dispute as to the content of conversations between representatives of the Company and a representative of the Pennsylania Human Relations Commis-

sion. This alleged conversation bears on the Company's motive and intent in offering "Claims Adjuster" status to be named Plaintiffs at the time that it did. We find this completely immaterial to the issue before us at this time because the offer of Claims Adjuster status was not made until the alleged discriminatory practices in violation of Title VII of the Act had continued for several years and the issue had been raised by a Complaint to the Equal Employment Opportunity Commission by the named Plaintiffs.

4.

The Defendant contends that there is a disputed issue of fact on the question of whether or not the qualifications and entrance requirements for the position of "Claims Adjuster" are substantially different from those of "Claims Representative". Although with respect to the duties and responsibilities of each position which we have previously designated as the "equal pay" issue, not before the Court on this Summary Judgment motion, nevertheless we are concerned at this time with whether or not qualified female applicants were excluded from the position of "Claims Adjuster" and its subsequent promotional ladder. The statistical evidence shows that of more than 2,000 persons hired for the position of "Claims Adjuster" up through 1970, not one was female. The Defendant's own representatives have admitted that the representative Plaintiffs in this case were qualified for the position of "Claims Adjuster" at the time of original hiring. Therefore, we find that the Defendant had not met the burden of showing why no female personnel were hired for the "Claims Adjuster" position during the period following the effective date of Title VII until sometime after August 1971 and subsequent to the filing of complaints in the within matter. Plaintiffs contention is further supported by evidence that no female employees occupied the supervisory position of "Claims Supervisor" in the Company which were filled from the ranks of the "Claim Adjusters" until at least 1970. If the jobs were substantially dissimilar as the Defendant claims, the differential in starting salary may be

justified but the total exclusion of women from entry into the higher paid "Claims Adjuster" position would remain as a discriminatory practice, and the promotional policy of the company in drawing all of its supervisory personnel from the ranks of the exclusively male "Claims Adjusters" continued and emphasized the discriminatory effect of the policy. Therefore, we find that the Defendant's argument of a difference in the qualifications or duties of the two positions is immaterial to the Plaintiffs' charge that women were discriminated against in the selection of persons to fill the "Claim Adjuster" position. The company has offered no evidence of any bonafide occupational qualification to justify the complete exclusion of women for this position for over a period of five years, particularly in view of its later determination that some women "Claims Representatives" were qualified for and were offered these positions.

5.

The Defendant argues that it is not clearly established by the evidence that a large number of Defendant's female employees were desirous of and qualified for better positions. We cannot see the materiality of this argument to the question presently before us. The undisputed evidence establishes that after charges were filed in this case, the Defendant did interview its "Claims Representatives" and that 10 of them were offered and accepted positions as "Claims Adjusters." It was further established by testimony of a Company representative that the Company considered one-third of its women "Claims Adjuster." We fail to see how these facts alter the statistical evidence that of the more than 2,000 "Claim Adjusters" hired between 1965 and 1970 none were women, that all of the "Claims Representatives" hired during this period were women, that no women in the job classification of "Claims Representative" was ever promoted to the supervisory position of "Claims Supervisor" during this period; that the Company deliberately engaged in the recruitment of women for the "Claims Representative" position and

represented the "Claims Adjuster" position to be solely a position for male applicants.

6.

The Defendant objects to using the import of the recruiting brochures which were offered in evidence by Plaintiffs and has shown that they have since been superceded by new recruiting literature that is not sex oriented. However, in this matter as in several other matters offered in defense in this case the evidence shows that the Company policy changed after having been continued for a period of approximately five years from the effective date of Title VII and after the threat of the instant litigation became imminent. While the change in Company policy may affect the question of the amount of damages for which it may be liable, we cannot see what effect it has on the liability of Defendant for its policy from and after July 2, 1965.

7.

The Defendant disputes the Plaintiffs' statement that Defendant discouraged acceptances for the offer given to female "Claims Representatives" for re-classification to the position of "Claims Adjuster." We do not find this to be a dispute on a material issue of fact. Whether or not the company discouraged its female "Claims Representatives" from accepting the offered position of "Claims Adjuster", after that occupational classification was opened to women is immaterial to the issue of whether or not the Company practiced discrimination in its employment policies from and after July 2, 1965.

For the purposes of this motion we may assume that the Company did not discourage its female employees from accepting offers to transfer to the classification of "Claims Adjuster."

8.

The Defendants disputes the inferences which the Plaintiffs draw from the facts that no women were promoted to the positions of Branch Office Claims Manager and above. Whether or not there is a dispute from these inferences the undisputed fact remains that no women in the Defendant's organization were promoted to or held these positions, and the Defendant has failed to come forward with any evidence to explain or refute the disparity in promotional practices.

II.

A second issue presented by Plaintiffs' motion for summary judgment may be broadly categorized as the maternity leave issue. This in turn is divided into two sub-issues which we label as

(a) the maternity leave conditions of employment

and

(b) the income protection plan as applied to maternity leave.

(a) *Maternity leave policy.*

Until March 1967, the Company policy was to terminate the employment of a pregnant employee at the end of her sixth month of pregnancy. Thereafter, until September 1970 the policy was to terminate an employee after the eighth month of pregnancy. An employee so terminated could be re-employed, at the sole discretion of the Company, if she re-applied for employment after the birth of her child and if there was a position available.

In September 1970, Company policy was changed to require pregnant employees either to terminate employment or to take a leave of absence at the end of the eighth month and to return to work either within six months of date of termination of em-

ployment or three months from date of delivery, whichever comes first.

In November 1971, Company policy was again changed to permit an employee to work for as long as her physician certifies her ability to work prior to commencing a maternity leave of absence.

(b) *Income Protection Policy.*

The Company provides as a fringe benefit of employment an Income Protection Plan which provides for the payment of income during periods of disability. This plan is funded by insurance benefits. The only long term disability for which no benefits are provided is pregnancy. Furthermore, the Defendant's health insurance plan provides coverage for children of employees who are working for the Company at the time of the birth of the child, and this excludes from coverage the child of an employee who is absent on a maternity leave of absence at the time of the birth of the child.

There is no disputed issue of fact as to the provisions of the maternity leave policies and the fringe benefit coverage of Defendant Company. The question presented to us is solely a matter of law as to the application of Title VII to these undisputed facts.

A threshold question raised by Defendant is that the Plaintiff (sic) have not fulfilled the statutory requirement of exhaustion of the administrative remedy, 42 U. S. C. 2000e-5(e) because the charges filed by the Plaintiffs with the EEOC never mentioned this aspect of the complaint. The policy of the statute is to give the EEOC an opportunity to investigate and conciliate charges of discrimination.

The strongest case urged by Defendant Company is *Tedford* v. *Airco Reduction Co.*, 4 F. E. P. Case 406 [5th Cir. 1972], where the Court of Appeals reversed the dismissal by the District Court of a claim for discriminatory hiring practices because

of mootness. The Appeals Court held that the subsequent hiring of plaintiff did not extinguish plaintiff's claim for back wages. However, the Court of Appeals did sustain the dismissal of claims of a discriminatory seniority system and discriminatory job assignments because,

> "the only factual allegation in Tedford's EEOC complaint was that Airco had refused to hire him as a truck driver because of his race."
>
> * * *
>
> "But giving this factual allegation the most generous construction possible, we still are unable to conclude that the investigation could properly have extended to Airco's seniority system, the driver lists and the like. A charge filed before the EEOC is not a plenary charter for a Commission investigation of every aspect of a company's employment practices. The conclusion is unavoidable that the EEOC has never been called upon to investigate these practices, and accordingly that litigation of their validity in federal court is premature."
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> 4 F. E. P. Cases, p. 409.

However, this was the same Circuit Court that decided *Sanchez* v. *Standard Brands*, 431 F. 2d 455 [5th Cir. 1970], and the *Tedford* court gave due regard to the *Sanchez* doctrine.

However, the courts have not restricted a plaintiff's suit under 42 U. S. C. 2000e-5(e) to the specific issues raised before the EEOC, nor to the specific findings of the EEOC.

> "Respondent satisfied the jurisdictional prerequisites to a federal action (i) by filing timely charges of employment discrimination with the Commission and (ii) by receiving and acting upon the Commission's statutory notice of the right to sue, 42 U. S. C. §§ 2000-e5(a) and 2000e-5(e). The Act does not restrict a complainant's right to sue to those charges as to which the Commisison has made finding of reasonable cause, and we will not engraft on the statute a requirement which may inhibit the review of claims of employment discrimination in the federal courts . . . and the courts of appeal have held that, in view of the large volume of complaints before the Commission and

> the nonadversary character of many of its proceedings 'court actions under Title VII are de novo proceedings and . . . a Commission "no reasonable cause" finding does not bar a lawsuit in the case.' *Robinson* v. *Lorillard Corp.*, 444 F. 2d 791, 800 [C. A. 4, 1971]; *Beverly* v. *Lone Star Lead Construction Corp.*, 437 F. 2d 1136 [C. A. 5, 1971]; *Flowers* v. *Local 6, Laborers International Union of North America*, 431 F. 2d 205 [C. A. 7, 1971]; *Fekete* v. *U. S. Steel Corp.*, 424 F. 2d 331 [C. A. 3, 1970]." *McDonnell Douglas Corp.* v. *Green*, 411 U. S. 792, 798-99 [1973].

In *Sanchez* v. *Standard Brands, Inc.* cit supra, it was explained that in filing a charge with the EEOC an aggrieved person is supplied with a simple one-page charge form in which a row of boxes is provided to check the category of discrimination. We have as Exhibits in the present case the Notice of Charge with (sic) the EEOC gave to Defendant Company for each case which indicates "Basis of Discrimination—Sex", and "Nature of Charge—Promotion—Terms and Conditions." The *Sanchez* court found that no charging party should be barred from the assertion of a charge because of the technicality of his description.

> "Surely the only procedural requirement which should confront a Title VII complainant is the requirement that he state, within the ninety-day period, *facts*, sufficient to trigger a Commission investigation. 431 F. 2d p. 462.

Sanchez continues:

> "At least one district court in this circuit has addressed itself to the question, however, and in our judgment it responded to the question by giving the correct answer. In *King* v. *Georgia Power Co.*, N. D. Ga. 1968, 295 F. Supp. 943, Judge Smith held that the allegations in a judicial complaint filed pursuant to Title VII 'may encompass any kind of discrimination like or related to allegations contained in the charge and growing out of such allegation during the pendency of the case before the Commission.' 295 F. Supp. at 947. In other words, the 'scope' of the judicial complaint is limited to the 'scope' of the EEOC

> investigation which can reasonably be expected to grow out of the charge of discrimination."
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> 431 F. 2d p. 466.

It appeared from oral argument that Defendant, although it had received the "Notice of Charge of Employment Discrimination", had not seen copies of the original charges filed by Plaintiffs with the Commission before the argument. It appeared that they had never been requested. They were supplied to the court and counsel the day following the argument on this motion. The charge of Plaintiff Mari Ross states, inter alia, "During interview for position as claims representative was subjected to questions regarding marital situation and birth control." Furthermore, the Plaintiffs were required to pursue their charges through an appropriate state agency, the Pennsylvania Human Relations Commission, which on July 1, 1971, sent to Defendant a Complaint which recited, inter alia:

> "The complainants further allege that female applicants, as a condition of hire, are subjected to inquiries about anticipated marriage and family size, while men are not similarly evaluated as a condition of hire."

(*Aune*, Deposition, Exhibit 1).

The court believes that the Representative Plaintiffs have properly employed the administrative procedures of Title VII which are a prerequisite to suit in the district court, they have properly raised the issue of sex discrimination in the "terms and conditions" of employment, that they specifically raised allegations of discrimination in respect to marital status and family planning sufficient to satisfy the administrative investigation requirement for raising the specific question of sex discrimination in maternity leave and pregnancy disability income policies in the present lawsuit.

As a point of departure in considering the merits of Plaintiffs' charges of sex discrimination with respect to Defendant's maternity leave and pregnancy disability income protection policies

it might appear to the lay mind that we are treading on the brink of a precipice of absurdity. Perhaps the admonition of Professor Thomas Reed Powell to his law students is apt; "If you can think of something which is inextricably related to some other thing and not think of the other thing, you have a legal mind."

We are dealing with a statute enacted by the Congress of the United States which says:

> "It shall be unlawful employment practices for an employer—
>
> (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges or employment, because of such individual's . . . sex; or
>
> (2) to limit, segregate or classify his employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's . . . sex."
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> 42 U. S. C. 2000e-2(a)

The defendant argues that its policies with regard to maternity leave and income protection for disability excluding pregnancy are not sex discriminatory because pregnancy is "sui generis" and thus subject to special treatment.

We believe that the court may take judicial notice of certain well known facts and statistics to illustrate the problem. We have taken our statistics from the United States Census figures as published in the 1974 edition of the World Almanac. In 1970, according to the census figures, there were 105,000,000 women and 100,000,000 men in the United States. In 1972 there were 31,000,000 women and 51,000,000 men, sixteen years of age and upwards, employed in the United States. Women between the ages of fourteen through forty-four amounted to 43.5% of the total female population or 46,657,000 women, which we equate with the childbearing age. There

is a necessary overlapping of the 31,000,000 women in the work force sixteen years of age and older, and the 45,000,000 women in the childbearing ages of fourteen to forty-four. There were 3,191,000 live births in the United States in the year ending June 30, 1973 which produces a birth rate of about fifteen per 1,000 of total population, but a fertility rate of sixty-nine births per 1,000 women fifteen to forty-four years of age. We recognize that more precise statistics are available but we are not concerned with minutiae and only recite these figures to illustrate the scope of the problem. Pregnancy is a natural condition. It is an expectable condition, it is a statistically foreseeable condition, and ultimately it is a necessary condition. It is a condition limited to women, not by statutory law or custom, but by biological law. If three-eighths of our employee working force consists of women, and their age group necessarily overlaps in large measure the childbearing age group, pregnancy is certain to occur in a statiscally expectable number of employees. We have no doubt that a large insurance company is well aware of the precise statistics. We further note from this case that the defendant's recruiting policies for female technical employees in its claims department was aimed at young women finishing their college education, and that its promotional policy was to advance personnel within its own ranks and not draw upon outside sources. This policy would only increase the incidence of young women of childbearing age among the female employees of a growing business organization such as Defendant, which hired over 2,000 new female claims representatives in a five year period.

Because pregnancy is a natural, expectable, and societally necessary condition, which is certain to occur in a statistically predictable number of women in the labor forces, we see no merit in Defendant's argument that it may be excluded from equality of treatment in conditions and benefits of employment because it is a voluntary condition. Whether voluntary or not, it occurs

with certainty and regularity. The distinction drawn between one hiring policy for men and another for women—each having pre-school age children—was rejected by the Supreme Court in *Phillips* v. *Martin Marietta Corp.*, 400 U. S. 542, 544 [1971] where there was no showing that the condition in question is a bonafide occupational qualification necessary to the operation of that particular business or enterprise.

The United States Equal Employment Opportunity Commission which is the administrative body created by Title VII to administer the Act, has issued the following Guidelines with respect to the question at issue:

> § 1604.10 Employment policies relating to pregnancy and childbirth.
>
> (a) A written or unwritten employment policy or practice which excludes from employment applicants or employees because of pregnancy is in *prima facie* violation of Title VII.
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> (b) Disabilities caused or contributed to by pregnancy, miscarriage, abortion, childbirth, and recovery therefrom are, for all job-related purposes, temporary disabilities and should be treated as such under any health or temporary disability insurance or sick leave plan available in connection with employment. Written and unwritten employment policies and practices involving matters such as the commencement and duration of leave, the availability of extensions, and accrual of seniority and other benefits or temporary disability insurance or sick leave plan, formal or informal, shall be applied to disability due to pregnancy or childbirth on the same terms and conditions as they are applied to other temporary disabilities.
>
> (c) Where the termination of an employee who is temporarily disabled is caused by an employment policy under which insufficient or no leave is available, such a termination violates the Act if it has a disparate impact on employees of one sex and is not justified by business necessity. 29 C. F. R., Labor Chapter XIV, Part 1604, As Amended (As of March 31, 1972).

§ 1604.9 Fringe benefits.

(a) "Fringe benefits," as used herein, includes medical, hospital, accident, life insurance and retirement benefits; profit-sharing and bonus plans; leave; and other terms, conditions, and privileges of employment.

(b) It shall be an unlawful employment practice for an employer to discriminate between men and women with regard to fringe benefits.

29 C. F. R. *idem*.

We give full recognition to the principle urged upon us that the EEOC Guidelines, 29 C. F. R. § 1604.10, effective April 5, 1972, do not have the force of law in the sense that the "regulations" or "subsantive rules" of an administrative body authorized by statute to promulgate regulations to implement existing law have a binding effect. We also recognize that the Guidelines are interpretive statements of what the administrative officer thinks the regulations mean. *Gibson Wine Co. Inc.* v. *Snyder*, 194 F. 2d 329 [D. C. Cir. 1951]. We are not compelled to follow them, but some deference is due. *Espinoza* v. *Farah Manufacturing Co.*, 462 F. 2d 1331, 1335 [6th Cir. 1972].

Our own Court of Appeals states it more strongly:

> "Such an administrative interpretation is entitled to great deference. *Griggs* v. *Duke Power Co.*, 401 U. S. 424, 433-434, 91 S. Ct. 849, 28 L. Ed. 2d 158 [1971]; *Udall* v. *Tallman*, 380 U. S. 1, 85 S. Ct. 792, 13 L. Ed. 616 [1965]. That the guideline was not promulgated until after this suit was initiated is of no moment. Rights which came into being when the Act was passed are not abrogated by administrative interpretation. *Bartmess* v. *Drewrys* U. S. C., Inc. 444 F. 2d 1186 [C. A. 7], *cert. denied*, 404 U. S. 939, 92 S. Ct. 274, 30 L. Ed. 252 [1971]."
>
> "A reading of the statute convinces us that the commission's interpretation furthers the legislative purpose of the Act and is consistent with the plain meaning of the language employed.

> 'Congress intended to strike at the entire spectrum of disparate treatment of men and women resulting from sex stereotypes.' *Sprogis* v. *United Air Lines, Inc.*, 444 F. 2d 1194, 1198 [C. A. 7], *cert. denied*, 404 U. S. 991, 92 S. Ct. 536, 30 L. Ed. 2d 543 [1971]." *Rosen* v. *Public Service Electric and Gas Co.*, 477 F. 2d 90, [3rd Cir. 1973], at pp. 94-5.

The only current provision of the Defendant's maternity leave policy under attack is the provision that the employee who is granted a leave of absence for maternity must return to work on a date certain or be terminated from employment. Plaintiffs' Complaint is zeroed in on the target that this limitation on leave of absence for temporary disability is only applied to maternity cases. There is no such requirement for any other disability.

Because state and local governments were exempted under Title VII until 1972, there are few Title VII cases involving pregnancy that give us guidelines, but the question has arisen frequently under cases presenting claims of denial of equal protection or denial of civil rights under color of state authority. We believe that Title VII standards are more compelling on a private employer in view of the express statutory mandate upon employers and the absence of the question of a "rational basis" for classification by which a state statute is measured. *Dandridge* v. *Williams*, 397 U. S. 471 [1970]. While a fixed state policy of classification may survive an equal protection attack it may still be violative of Title VII. See *Schattman* v. *Texas Employment Commission*, 459 F. 2d 32 [5th Cir. 1972], and *Newmon* v. *Delta Airlines, Inc.*, 475 F. 2d 768, [5th Cir. 1973].

A district court in the Fifth Circuit has recognized that:

> *"Schattman*, . . . turned upon a divided Appellate Court's interpretation of the federal statute as it then read on the question of its exclusion from coverage of state employers and employees." *Vick* v. *Texas Employment Commission*, 6 EPD 5990 [S. D. Tex. Aug. 30, 1973].

However, the *Vick* case found this impediment to jurisdiction removed by the 1972 Amendment to Title VII, and proceeded to find that the state's denial of unemployment benefits on the grounds that the last trimester of pregnancy rendered a woman unavailable for work, violated the provisions of Title VII.

> "While the expectancy of life confined and incident to female pregnancy involves many delicacies of personal, institutional and societal interest, *Roe* v. *Wade*, 410 U. S. 113, 41 L. W. 4231 (January 22, 1973), such a natural and necessary female condition cannot be a basis for categorical discrimination in light of *Phillips* and its plain interpretation of Title VII of the Act." *Vick*, cit. *supra*, 5 EDP p. 5992.

Nevertheless, we can take some guidelines from the Equal Protection Clause cases dealing with pregnancy.

Judge Brown in his dissent in *Phillips* v. *Martin Marietta Corp.*, 416 F. 2d 1257 [5th Cir. 1969], vacated *per curiam* 400 U. S. 542 [1972] noted with respect to that case, where women with pre-school age children were denied employment, but not men:

> "The distinguishing factor seems to be motherhood versus fatherhood. The question then arises: Is this sex-related? To the simple query the answer is just as simple: Nobody —and this includes Judges, Solomonic or life tenured— has yet seen a male mother. A mother, to oversimplify, the simplest biology, must then be a woman". 416 F. 2d p. 1259.

To the argument that pregnancy is a voluntary status, the court in *Buckley* v. *Coyle Public School System*, 476 F. 2d 92 [10th Cir. 1973] says:

> "The fact, if it be a fact, that pregnancy is a voluntary status really has nothing to do with the question. The point is that the regulation penalizes the feminine school teacher for being a woman and, therefore, it must be condemned on that ground." 476 F. 2d at p. 95.

The Court of Appeals reversed the District Court's dismissal

and remanded the case to the District Court for determination of a compelling state interest to justify the regulation.

In *Green* v. *Waterford Board of Education*, 473 F. 2d 629, [2nd Cir. 1973], the Court of Appeals reversed a District Court's dismissal of a complaint alleging that an inflexible maternity leave policy denied equal protection. Even though the District Court has found a rational basis for the school board's action, the Court of Appeals found that the state's interests were not sufficiently promoted by rule to justify the arbitrary and inflexible regulation applied to pregnancy as distinguished from other disabilities.

> "The heart of plaintiff's case is that disqualifying a physically capable woman from working because of a condition related solely to her sex is unconstitutionally discriminatory. Plaintiff admits the obvious, that men do not become pregnant, but points out that men, being human, are also subject to crises of the body, some of which, like childbirth, give ample warning: A cataract operation or a prostatectomy, for example, may be planned months ahead. Because male teachers are not forced by defendant-Board to take premature leave because of a known forthcoming medical problem, female teachers should not be treated differently. Thus stated, the argument is persuasive, even compelling. One realizes with a shock what so many women now proclaim: Old accepted rules and customs often discriminate against women in ways that have long been taken for granted or have gone unnoticed." (p. 634)

See also the following Equal Protection clause cases involving maternity leave:

> *LaFleur* v. *Cleveland Board of Education*, 465 F. 2d 1184 [6th Cir. 1972], *cert. granted* 93 S. Ct. 1921 but Cf. *Cohen* v. *Chesterfield County School Board*, 474 F. 2d 395 [4th Cir. 1973], *cert. granted* 93 S. Ct. 1925.

Defendant has interposed a defense of good faith reliance upon an administrative interpretation, particularly in its defense on the income protecton exclusion policy here. This may be a matter to consider when the question of affirmative relief or

back pay are determined but we cannot see its application to the immediate question of the inflexible maternity leave standard. During the period prior to the Guidelines published in March 1972, there were no guidelines or opinions issued by the EEOC. 29 U. S. C. 2000e-12(b) (Sec. 713(b) of the Act) provides that "no person shall be subject to any liability or punishment for or on account of (1) the commission by such person of an unlawful employment practice if he pleads and proves that the act or commission complained of was in good faith, in conformity with and in reliance upon any written interpretation or opinion of the Commission."

We do not believe that the various opinion letters referred to in the brief of *amicus curiae* United States Chamber of Commerce, with respect to the inclusion of maternity benefits in an insurance plan meet the requirements of Sec. 713; there is no evidence that defendant relied upon them, they were not addressed to the defendant, and do not otherwise conform to the requirements of a written opinion under which the defense of reliance may be asserted. *United Papermakers and Paperworkers, etc.* v. *United States,* 416 F. 2d 980 [5th Cir. 1969]; *Sprogis* v. *United Air Lines, Inc.,* 444 F. 2d 1194 [7th Cir. 1971].

The maternity leave policy of the company which since 1970 has granted a leave of absence for six months from the last date of work before delivery, or for three months from the date of delivery, whichever comes first, has no relation to the fitness of any individual female to perform the functions of her job.

The defendant has not alleged, nor has it offered any evidentiary material to establish that there is a disputed issue of fact dependent upon a bona fide occupational qualification. Such a bona fide occupational qualification is a defense to a charge of discrimination where sex is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise. This has been narrowly construed by the courts. In *Weeks* v. *Southern Bell Telephone*

and Telegraph Company, 408 F. 2d 228 [5th Cir. 1969] the Court held this must give the employer "a factual basis for believing that all or substantially all women would be unable to perform safely and efficiently the duties of the job involved." In *Rosenfeld* v. *Southern Pacific Co.,* 444 F. 2d 1219 [9th Cir. 1971] the court held the exclusion of women justified only when "the sexual characteristics of the employee are crucial to the successful performance of the job, as they would be for the position of a wet-nurse." Under *Rosenfeld,* if one woman can do the job the employer cannot impose a blanket rule denying all women the opportunity.

Under the company policy any female who cannot return to her job within three months of delivery of her child is automatically terminated. No other disability is cause for such automatic termination. "For a woman, however, the effects of pregnancy and pregnancy-related illness are debilitating in much the same way as the physical and mental conditions that are included within the scope of the disability insurance program." *Aiello* v. *Hansen,* 359 F. Supp. 792 [N. D. Cal. 1973].

We conclude, as a matter of law, that the maternity leave policy in effect in Defendant Company at the present time and since September 1970 in the respect in which it requires a female to return to work within three months of the date of delivery of her child, or six months from the beginning of her maternity leave, whichever date is earlier, or face termination of employment, is violative of Sec. 703, of Title VII of the Civil Rights Act of 1964, as amended, in that such policy discriminates against female employees on the basis of sex.

Because only this present policy is still in existence, injunctive relief as to this practice is appropriate at this time.

We further find that all prior company policies in effect since July 2, 1965, which compelled pregnant female employees to leave employment at a fixed period of pregnancy before delivery were likewise violative of the Act, and the company policy in effect since July 2, 1965 which denied reemployment because

of pregnancy and maternity were violative of the Act. Because these practices have ended there is no need for injunctive relief, and the question of the intentional nature of the violation and the appropriate relief will be considered in a subsequent stage of these proceedings.

Some additional considerations must be weighed with respect to plaintiffs' claim that the Income Protection Plan of Defendant company is discriminatory to female employees. The Company provides its employees with a contributory insurance plan for continuation of income for a "long term illness", i.e., an illness requiring treatment by a doctor of eight or more calendar days which causes absence from work. Such "benefits are not payable for disability due to occupational injury or to sickness covered under Workmen's Compensation Insurance; for disability due to pregnancy; for a disability in excess of 104 weeks; or for a disability during which you were not treated by a physician licensed to practice medicine."

Pregnancy is the only disability, not within the other exceptions, not covered by the Income Protection Plan. Pregnancy is a condition limited to women. Conditions limited to men, such as prostate troubles, are not excluded, nor is any exclusion provided for a number of illnesses whose incidence among males is greatly predominant (i.e. gout 19 to 1; the Merck Manual, 10th ed. 1961).

The brief of the United States Chamber of Commerce as *amicus curiae* cites cost of the program if pregnancy were included, as a justification for exclusion.

We must emphasize the distinction made by the Guidelines, § 1604.10(b) that it is "disabilities caused or contributed by pregnancy, miscarriage, abortion, childbirth, and recovery therefrom" which for job-related purposes are to be treated as temporary disabilities. They do not cover leave for child rearing, but only for job disability. No evidence has been presented to us by Defendant as to the average duration of pregnancy disability. Again, we have a difficult time in freeing ourselves from

stereotype thinking. We note that the Defendant's policy for maternity leave prior to delivery has accommodated itself from a fixed number of months prior to delivery to the recognition that an employee may work prior to delivery as long as she is able to do the job. Return to work may be made as soon after delivery as she is able to do the job. We may assume from a general knowledge of the conditions of life, that in the normal or usual pregnancy, the period of disability will be relatively short. There is nothing in this record to show, and nothing in our general experience with life indicates that the job-related incidence of disability for pregnancy is any greater or any less than that for a prostatectomy.

The EEOC Guidelines provide, § 1604.9 Fringe Benefits, (e):

> "It shall not be a defense under Title VII to a charge of sex discrimination in benefits that the cost of such benefits is greater with respect to one sex than the other."

While cost may be a business purpose, and certainly to add pregnancy disability to the insurance program will cost more, it can only be a defense in a Title VII action where

> ". . . there exists an overriding legitimate business purpose such that the practice is necessary to the safe and efficient operation of the business. Thus, the business purpose must be sufficiently compelling to override any racial impact, the challenged practice must effectively carry out the business purpose it is alleged to serve; and there must be available no acceptable alternative policies or practices which would better accomplish the business purpose advanced, or accomplish it equally well with a lesser differential racial impact. (footnotes omitted.) *Robinson* v. *Lorillard Corporation,* 444 F. 2d 791, 798 [4th Cir. 1971].

With respect to the argument of increased costs there is no statutory requirement that Defendant company offer any particular disability benefits, in any specific amount, or of any particular duration. The only requirement is that there be no inequality based on sex. Adjustments in the benefit plan to

achieve equality are a recognized means of achieving that end. *Rosen* v. *Public Service Electric Co.* cit. supra (p. 95); *Hayes* v. *Potlatch Forests, Inc.*, 465 F. 2d 1081 [8th Cir. 1972].

> "The increased costs could be accommodated quite easily by making reasonable changes in the contribution rate, the maximum benefits allowable, and the other variables affecting the solvency of the program." *Aiello* v. *Hansen*, 359 F. Supp. 792, at p. 798 [N. D. Cal. 1973].

A final requirement for a finding of violation of Title VII is that the court must find that defendant "has intentionally engaged in or is intentionally engaging in an unlawful employment practice charged in the complaint" in order to issue an injunction or to order such affirmative action as may be appropriate. While we are not now concerned with any question of relief in which the questions of back pay or reinstatement may be considered, certain continuing policies of defendant are subject to immediate injunctive relief, and require a finding of international (sic) action. Defendant has raised no question of international (sic) violation, except as to its defense of good faith reliance on administrative interpretation which we have found insufficient. The term "international" (sic) in this Act means that the Defendant intended to do what it did, not that there was a wilful and deliberate intention to violate the law.

> ". . . intentional unfair employment practices are those engaged in deliberately and not accidentally. No willfulness on the part of the employer need be shown to establish a violation of Sec. 706(g)." *Kober* v. *Westinghouse Electric Corp.*, 480 F. 2d 240, 246 [3rd Cir. 1973].

We, therefore, find that the violations of Title VII of the Act herein charged were intentional within the terms of the statute.

We, therefore, conclude that as to the issues raised by Plaintiffs' Motion for Partial Summary Judgment, there is no genuine issue as to material fact and that summary judgment interlocutory in character should be entered on those issues.

Because the evidentiary materials show that at certain times subsequent to the effective date of the Act, or subsequent to

the filing of the administrative charge or the within Complaint the Defendant has ceased or discontinued the discriminatory practice, injunctive relief is not appropriate as to those practices. *Kober* v. *Westinghouse Elec. Co.*, supra, p. 250.

As to continuing practices which violate Title VII preliminary injunctive relief at this time is appropriate.

The question of other affirmative relief for past actions is not now before us. The Court is mandated to issue "such affirmative relief as may be appropriate." *Kober*, cit supra. This will depend upon the evidence to be presented on the individual claims, which may be considered at the time of trial of the "equal pay" issue not here considered.

IN THE UNITED STATES DISTRICT COURT

* * (Caption—72-169) * *

ORDER

Now this *9th day of January, 1974*, Plaintiffs having moved for partial summary judgment on certain of the issues raised by the pleadings in this case, and having produced evidentiary materials in support of said motion, and the Defendant having responded, and the court having reviewed briefs and arguments of the parties and of the *amici curiae*.

The court finds that there is no genuine issue of material fact as to the issues hereinafter set forth, and that partial summary judgment, interlocutory in character, on the following issues of fact may be entered as a matter of law, it is

Therefore Ordered, in accordance with the foregoing Opinion, that Defendant be found to have violated the provision of Title VII of the Civil Rights Act of 1964, 42 U. S. C. 2000(e) et seq., and Sec. 703(a)(91) of said Title VII, in that Defendant has failed or refused to hire and has otherwise discriminated against Plaintiffs and member of the class of female technical employees of the Claims Division of the Liberty Mutual Insurance Company because of their sex in the following respects:

1. From and after July 2, 1965 it failed and refused to hire otherwise qualified female applicants for the entry level position of "Claims Adjuster" in its Claims Department.

2. From and after July 2, 1965 it failed and refused to transfer or promote otherwise qualified female applicants from the position of "Claims Representative" to the position of "Claims Adjuster" in its Claims Department.

3. From and after July 2, 1965 it failed and refused to promote otherwise qualified female employees to the position of

"Claims Supervisor" and positions superior to that position in its Claims Department.

4. That from and after July 2, 1965 the Defendant Company failed and refused to allow pregnant employees, otherwise able to perform the duties of their employment, to continue their employment beyond a certain term of their pregnancy, after which their employment was terminated.

5. That the violations of Title VII found in paragraphs 1, 2, 3, and 4 above have ceased as a matter of Company practice and no injunctive relief with respect to these issues is appropriate.

6. That from and after July 2, 1965 the Defendant Company required female employees to return to work within three (3) months of delivery or within six (6) months of the start of maternity leave, or be dismissed from employment, without regard to their ability to perform the duties of their employment.

7. That from and after July 2, 1965 the Defendant Company denied the benefits of the disability income protection plan to female employees who otherwise met the conditions of the plan for any disability related to pregnancy or childbirth.

8. That the violations of Title VII recited in paragraphs 6 and 7 above are continuing violations and are the proper subject of injunctive relief. The court will consider the terms of any proposed preliminary injunctive order with respect to these violations submitted by the Plaintiffs in this case.

9. The questions of further appropriate relief to the individual Plaintiffs and members of their class will be determined by the court in further proceedings.

10. The question of liability and appropriate relief for the issue of equal pay for equal work between male and female employees is reserved for further proceedings.

GERALD J. WEBER
United States District Judge

IN THE UNITED STATES DISTRICT COURT

* * (Caption—72-169) * *

MOTION FOR RECONSIDERATION

Now comes Liberty Mutual Insurance Company and requests that the Court reconsider that portion of its Order of January 9, 1974 that found that the Defendant's policy of requiring female employees to return to work within three months of delivery or be terminated and its policy of denying the benefits of the disability income protection plan to female employees for any disability related to pregnancy or childbirth are violations of Title VII of the Civil Rights Act of 1964, as amended and states as follows:

1. On December 31, 1973, the Honorable Albert Henderson of the United States District Court for the Northern District of Georgia stated in *Newman* v. *Delta Air Lines, Inc.*, Civil Action No. 15681,[1] that "pregnancy is neither a sickness nor a disability. In the first place, pregnancy is, in most cases, a voluntarily imposed condition and the fact of its existence demonstrates that a woman is quite healthy and normal, since sick is defined as 'affected with disease; not well or healthy, ill, ailing, indisposed.' A reasonable approach dictates the holding that pregnancy is not sickness in the usual sense of the word." The defendant's policy pays for disability resulting from injury or sickness. Based on the holding in Delta, the defendant's program would be lawful.

2. The decision of the United States Supreme Court in *Cleveland Board of Education* v. *LaFleur*, Nos. 72-777 and 72-1129 does not decide whether or not the defendants "cut-off" is proper because:

A. LaFleur is a 14th Amendment case and doesn't decide the matter based on Title VII.

1. Exhibit A to this Motion.

Furthermore, the defendant cannot suggest to the Court what a proper cut-off period would be because:

A. There are no statistics to base a suggestion on, and

B. Even if there were statistics they would be of no value because no employer has ever paid disability benefits while the female was on pregnancy leave of absence and, thus no one can say how long the female will stay out. Furthermore, because employees of the defendant can, in some situations make as much or more money by receiving disability income, it can be assumed that females on pregnancy leave of absence will remain at home longer than normal.[2]

C. Because of the vast national importance of both of the "pregnancy" issues it is requested that the Court, pursuant to 28 U. S. C. § 1292(b) amend its order to contain the statement required so that defendant may seek to take a permissive appeal to the United States Court of Appeals on all the "pregnancy" issues. The appearance of both amicus and the seriousness of the issues as they affect not only the defendant, but all employers in the United States require that such a statement be contained; if the Court is not disposed to amend its order to contain the § 1292(b) statement then, it is requested that if an injunction is issued that the Court stay it pending appeal pursuant to 28 U. S. C. § 1292(a). The fact that any injunction will be stayed will not result in irreparable injury and the defendant can maintain a list of employees in the claims department who will from January 9, 1974 be affected by its "pregnancy" rules.[3]

2. This is not to be critical, but human nature dictates that if the female can be paid for staying home, she will.

3. As the Court knows, a Notice of Appeal has already been filed. It was filed because the Court stated it was going to enjoin the practices of the defendant. An interesting question has been presented, i.e. whether that is the granting or denying of an injunction so an appeal can be taken. The defendant would argue that the Court's statement satisfies the jurisdictional requirements but clearly the Court, pursuant to Rule 62(c) can suspend the injunction pending review.

D. If the Court is disposed to enter an injunction, the one proposed by Plaintiffs' is inappropriate because: (i) Only paragraphs 1 and 2 are appropriate to the facts of this case and (ii) no affirmative relief should be contained until such time as the Court of Appeals or the Supreme Court fashions a proper remedy.

Dated: January 30, 1974

Respectfully submitted,

LIBERTY MUTUAL INSURANCE COMPANY
By: /s/ KALVIN M. GROVE
LEDERER, FOX AND GROVE
111 West Washington Street
Chicago, Illinois 60602

ROBERT A. PENNEY
175 Berkeley Street
Boston, Massachusetts 02226

CLEM R. KYLE
1305 Clark Building
Pittsburgh, Pennsylvania 15222

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing Motion For Reconsideration was mailed on January 30, 1974 to:

Howard A. Specter, Esquire
Litman, Litman, Harris & Specter
Grant Building
Pittsburgh, Pennsylvania 15219

James F. Bennett
Equal Employment Opportunity Commission
Room 2038 A, Federal Building
1000 Liberty Avenue
Pittsburgh, Pa. 15222

Gerard Smetana
925 S. Homan Avenue
Chicago, Illinois

Julian Schreiber
120 South LaSalle Street
Chicago, Illinois

Walter P. DeForest
747 Union Trust Building
Pittsburgh, Pa. 15230

Milton Smith, General Counsel
Chamber of Commerce of U. S. A.
1615 H. Street, N. W.
Washington, D. C.

/s/ KALVIN M. GROVE
Kalvin M. Grove

UNITED STATES DISTRICT COURT
Northern District of Georgia
Atlanta Division

MRS. LINDA NEWMON,
vs.
DELTA AIR LINES, INC.

Civil Action
No. 15681

ORDER

This is a class action brought pursuant to Title VII of the Civil Rights Act of 1964 (hereinafter referred to as the "Act") 42 U. S. C. § 2000e *et seq.*, for injunctive relief, back wages and restoration of benefits because of alleged sex discrimination by the defendant, Delta Air Lines (hereinafter referred to as "Delta") in the effectuation and operation of its maternity leave policy.

The plaintiff was employed by Delta for almost ten years, from December 1, 1960 to June 15, 1970. During this time she held clerical assignments in the reservations department including that of "Quick Reference Clerk" for five years, reservationist for two years and finally, "Information Clerk", a position she retained until she began her maternity leave. Under Delta's maternity leave policy for ground employees, the plaintiff was required to go on unpaid maternity leave at the end of the fifth month of pregnancy. Upon leaving she received accrued vacation pay but, in accordance with the airline's policy, was not entitled to accrued sick pay, additional seniority or group insurance except that portion covering child birth expenses.

Six weeks after the birth of her child, and with her physician's approval, she notified her supervisor of her desire to return to work but was informed that no position was available which was suitable to her qualifications. She was further advised that

her successor, who was to start maternity leave November 14, 1970, would not be replaced because of economic difficulties Delta was experiencing at that time. After eight months of contacting Delta by telephone and in person, the plaintiff filed, on May 31, 1971, a charge of sex discrimination against Delta with the Equal Employment Opportunity Commission (hereinafter referred to as "EEOC"). On August 15, 1971, she amended the charge for purposes of verification. She received her 30-day "right to sue" letter from EEOC on September 7, 1971 and filed this action shortly thereafter.

The plaintiff's motion for preliminary injunction, reinstatement and back pay was heard and denied by the court on May 31, 1972. On appeal, the United States Court of Appeals for the Fifth Circuit affirmed and remanded the case for trial. *Newmon* v. *Delta Air Lines, Inc.*, 465 F. 2d 768 (5th Cir. 1973).

At the hearing on the preliminary injunction, the plaintiff learned that her reinstatement rights would not be affected by taking other employment. She thereafter sought work with other Atlana-based airlines but was unsuccessful because of the general "slow down" in the industry. Further efforts to find a job with other businesses nearer her home proved fruitless except for one offer which she rejected for reasons of personal convenience. Finally, on May 14, 1973, she was offered reinstatement by Delta to a shift assignment in the reservation department, the position she now holds.

Delta's maternity leave policy was developed through four distinct periods of time. Prior to 1958 all Delta female ground employees who became pregnant were required to resign their jobs at a date agreed upon by the employer and her supervisor. Because of problems inherent in such a system, the policy was changed in 1958 to provide for termination at the end of the fifth month of pregnancy. Once on leave, the employee accrued no seniority and received only vacation pay then due. Reinstatement was dependent upon there being an opening suitable

to her qualifications. In 1968, the policy was again modified to permit a return to work on a preferred basis within 90 days after the birth of the child with no loss of seniority if positions were available. This was the maternity leave policy which governed the plaintiff's employment status. Prior to 1970 stewardesses were required to resign as soon as they learned of their pregnancy, but in 1970, this plan for stewardesses was revised to correspond more favorably to the 1968 ground personnel position. The stewardesses, however, were still required to leave their jobs immediately upon learning of their pregnancy. During leave, the stewardesses accrued three months seniority. The last maternity leave policy revision became effective in November, 1972 and allows female ground employees to work through the eighth month of pregnancy and to continue accruing seniority during the pregnancy absence.

The issues raised in this case as set forth in the pre-trial order are as follows:

1. Whether the defendant's maternity leave policy constitutes sex discrimination under Section 703 of the Civil Rights Act of 1964 in the following respects:

(a) By requiring all ground employees to take leave automatically by the end of the specified month of pregnancy without regard to the abilities of individual women to continue working into the later stages of pregnancy;

(b) By denying pregnant employees the use of sick leave or any other employment benefits normally available to those on sick leave, i.e., accrual of seniority and the use of medical insurance benefits;

(c) By permanently replacing pregnant women but giving them priority for future openings in similar positions and preserving their benefits which are based on length of service;

(2) Whether all physical conditions which temporarily disable employees from working should be treated by employers in exactly the same manner;

(3) Whether the EEOC's guidelines of 1972 pertaining to maternity leave are entitled to great deference in this case.

Before giving consideration to the merits of the case there remain three motions filed immediately prior to the trial which must be decided: (1) the plaintiff's motion for certification of the class, (2) the motion of Mrs. Dian T. Thompson, a Delta stewardess, to intervene, and (3) the plaintiff's motion to sever pursuant to Rule 42, Fed. R. Civ. P.

The plaintiff defines the class she seeks to represent as "all female employees of defendant Delta . . . based at any Atlanta facility, whose employment with the defendant and employment related benefits were broken by furlough, discharge or forced resignation occasioned by reason of pregnancy from May 13, 1969 until present." It is alleged that the company's maternity leave policy applies to all women employees automatically and without exception.[1] The plaintiff contends that Rule 23(a)(2), Fed. R. Civ. P. is satisfied since her claims are typical of those of the class and therefore common questions of law and fact are involved. Additionally, she argues that the purported class satisfies the Rule's numerosity requirement[2] and she will fairly and adequately represent the class since her counsel is experienced and competent in class litigation.[3] Finally, she asserts that the proposed class is manageable yet large enough to be treated as such.

---

1. As previously indicated, the Delta maternity policy as it relates to stewardesses varies from its application to ground employees in that forced maternity leave begins at an earlier date. The plaintiff notes that due to "the unusual demands of that position" no attack is made on the timing of this rule. (Plaintiff's brief in support of the motion, p. 4, fn. 4.)

2. There appears to be some confusion with respect to the exact number of members in the purported class. In the motion for determination of the class the plaintiff alleges there are 193 members. However, in the pre-trial order 198 women are in the class.

3. Johnson v. Ga. Highway Express, Inc., 417 F. 2d 1122 (5th Cir. 1969).

The defendant replies that (1) the mandate of Rule 23(a)(4), Fed. R. Civ. P. is not satisfied because the plaintiff cannot fairly protect the interests of the class, (2) the plaintiff is without standing to attack Delta's denial of sick leave benefits, (3) the plaintiff did not file a timely charge on the denial of sick pay, (4) there are not questions of law and fact common to the entire class membership as proposed and (5) proper notice has not been given to the class pursuant to Rule 23(c)(2), Fed. R. Civ. P.

To be maintainable as a class action, a suit generally must meet all the requirements set forth in Section 23(a) and also fall within one of the subsections of 23(b) of the Federal Rules of Civil Procedure. *Eisen* v. *Carlisle & Jacquelin*, 391 F. 2d 555, 561 (2d Cir. 1968). First, the plaintiff must establish the following requirements of Rule 23(a):

> (1) the class is so numerous that joinder of all members is impracticable.
>
> (2) there are questions of law or fact common to the class.
>
> (3) the claims . . . of the representative parties are typical of the claims . . . of the class.
>
> (4) the representative parties will fairly and adequately protect the interest of the class.

Second, 23(b)(3) requires that, additionally:

> the court finds that the questions of law or fact common to the members of the class predominates over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to the findings include: (a) the interest of the class in individually controlling the prosecution or defense of separate actions; (b) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (c) the desirability or undesirability of concentrating the litigation of the class in a particular forum; (d) the difficulties likely to be encountered in the management of a class action.

There are two prerequisites to the institution of a Title VII class action: (1) Rule 23 Fed. R. Civ. P. must be satisfied and (2) the issues raised must be those the plaintiff has standing to raise and in fact did raise before the EEOC. *Otis* v. *Crown Zellerbach Corp.*, 398 F. 2d 496 (5th Cir. 1968). See also *Smith* v. *North American Rockwell Corp.*, 50 F. R. D. 515, 524 (N. D. Okla. 1970). The requirement of "exhaustion" before the EEOC, and thus standing to file a civil action, is not interpreted to mean that all the niceties of legal pleadings must be fulfilled. Usually, persons filing EEOC complaints are not schooled in legal technicalities and some flexibility must be allowed. The standard for EEOC exhaustion is ably described in *King* v. *Georgia Power Co.*, 295 F. Supp. 943, 947 (N. D. Ga. 1968):

> The correct rule is that the complaint in the civil action is confined to those issues the original complaint has standing to raise, but may properly encompass any such discrimination like or reasonably related to the allegations of the charge and growing out of such allegations during the pendency of the case before the Commission. [footnote omitted]
>
> This rule, broadly speaking, in effect limits the civil action to that range of issues that would have been the subject matter of the conciliation efforts between EEOC and the employer. If the civil action were not so limited, then the primary emphasis of this Title would be circumvented, i.e., an emphasis upon voluntary settlement of all issues without an action in the District Court. . . . It should be emphasized that the EEOC is not free to manipulate the scope of a case beyond the bounds herein expressed. The expansion of a particular charge is limited to the issues that a partciular complainant has standing to raise. . . .

Applying this rule to the present case, the plaintiff has sufficiently submitted her claims to the EEOC. The issues presented here are those plaintiff has standing to raise and *"encompass any such discrimination like or reasonably related to the allegations of the charge and growing out of such allegations during the*

pendency of the case before the Commission." (Emphasis added.) *King* v. *Georgia Power Co., supra,* at 947; *Danner* v. *Phillips Petroleum Co.,* 447 F. 2d 159, 162, *reh. en banc den.,* 450 F. 2d 881 (5th Cir. 1971). Accordingly, the second requirement of *Oatis* for a Title VII class action is met.

It further appears that the requisites of Rule 23, Fed. R. Civ. P. as hereinbefore delineated are generally fulfilled, The fact that almost 200 female employees have been affected by the alleged discriminatory acts of Delta is sufficient to justify class treatment of this case. See generally 3B Moore's *Federal* Practice, ¶ 23.5, pp. 23-271 *et seq.*

However, plaintiff's construction of the class presents a different problem. It is elementary that questions of law and fact common to the class must exist.[4] The persons presumably constituting this class may be categorized into two distinctive groups: (1) flying personnel and (2) ground employees. The plaintiff and the majority of those she seeks to represent are ground personnel. While the challenge to the Delta maternity leave policy involves some common issues of law affecting all female employees, it is clear that there are important factual differences pertaining to stewardesses. In the first place, the terms of the leave policy vary between the categories of personnel as previously noted. The separate job demands of the two create obvious factual deviations critical to a determination of the issues here. The stewardesses must necessarily work in confined spaces—aircraft cabins, they are required by the nature of their jobs to stand, stoop and walk continually whereas ground employees generally have opportunities to sit or recline when necessary; medical attention for the stewardesses is not available; and the danger of accident and injury in flight to the mother and/or child is greater for pregnant flight attendants.

4. While some courts and authorities question the need of Rule 23(a)(2) due to the addition of Rule 23(b), there is no compelling reason to disregard its presence or lessen its importance. See, e.g., 3B Moore's Federal Practice, ¶ 23.06-1, pp. 33-301-303 and cases cited therein.

These job variances are indicative of the different facts necessary to be developed in order to establish whether the Delta plan is discriminatory. Thus, it is apparent that the plaintiff's class should be limited to ground employees.

Without the inclusion of flying personnel, the claims of the plaintiff would be typical of those of the re-defined class. Rule 23(a)(3). The plaintiff can adequately represent and thereby sufficiently protect the interests of the new class, Rule 23(a)(4).[5] Furthermore, there are co-extensive interests between the plaintiff and the class of ground employees.[6] Therefore, the class must be confined to those female Delta employees classified as ground personnel.

With the flying personnel excluded from the class sought to be represented by the plaintiff the conditions of Rule 23(b)(3) are satisfied. The common questions of law and fact now predominate over any individual issues in the case. The plaintiff's motion to certify the class is granted in part within the limits hereinbefore defined.

From the foregoing discussion it is apparent that the motion of Mrs. Dian T. Thompson to intervene cannot be granted because of the difference in the factual situations and it is therefore denied.

In addition, Mrs. Thompson does not have standing to challenge the Delta maternity leave policy. According to the affidavit of John Dodd, the supervisor of the Atlanta-based stewards and stewardesses, the movant resigned on August 31, 1970 because she was to be married. Attached to the affidavit is a file copy of an intercompany memorandum from Mrs. Thompson, nee Tucker, stating that she "wishes to submit [her] resignation for flying for the reason that [she is] getting married." Mrs. Thompson added that because she enjoyed her employment with Delta she hoped to return in another capacity in the future.

5: 3B Moore, supra, ¶ 23.07.

6. 3B Moore, supra, ¶ 23.07[2], p. 23-371; Eisen v. Carlisle & Jacquelin, supra, at 562, 563.

It is obvious that her termination did not result from the maternity leave policy.

Finally, the plaintiff moves to sever liability and damages under Rule 42, Fed. R. Civ. P. Prior to the trial, the court indicated its concurrence with this motion and stated to counsel that the final hearing would encompass only the liability questions, reserving until a later date the issue of damages and other relief, if necessary. The case proceeded to trial with this understanding. The motion is belatedly and formally granted.

Section 703(a)(1) of Title VII of the Civil Rights Act of 1964, 42 U. S. C. § 2000e-2(a)(1) prohibits the discharge of any employee or from discrimination with respect to the terms, conditions or privileges of employment on the basis of sex.[7] There exists, however, an exception for cases of sex discrimination in the "bona fide occupational qualification" (hereinafter referred to as the "B. F. O. Q.") test found in Section 703(e) (42 U. S. C. § 2000e-2(e)) of the Act.

In the trial, both parties offered the testimony of highly qualified physicians—obstetricians, gynecologists, hematologists and psychiatrists in support of their respective positions. These witnesses, whether called by the plaintiff or the defendant, indicated that the decision as to when a pregnant woman should cease her outside work was an individual one to be made by the physician and the patient. The considerations for such a determination include, among other things, working conditions, the type of work performed, the preference of the woman, the accessibility of a hospital, and of course, the possibility of complications to both mother and child. The experts almost entirely agreed that, in most cases, a woman could work until

7. Section 703(a)(1), 42 U. S. C. § 2000e-2(a)(1) reads as follows:

> It shall be an unlawful employment practice for an employer (1) to fail or refuse to hire or to discharge any individual or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex or national origin.

the onset of delivery with proper diet, prenatal care and appropriate working conditions. In fact, in some cases, it was noted that the requirement that pregnant women leave their job could have detrimental effects. One of the defendant's own witnesses, when asked whether a maternity leave policy requiring the woman to leave work after five months was reasonable, commented: "Well, I am not so sure it's a reasonable policy. . . ." He listed several factors to be taken into consideration in making such a determination including those mentioned above.[8] From the evidence, there is no legal or factual foundation with which to support a policy of arbitrarily fixing a time when a pregnant woman must terminate her employment.

Similar cases interpreting Section 703 establish that employer policies based on sex will not be tolerated. *Bowe* v. *Colgate-Palmolive Co.*, 416 F. 2d 711 (7th Cir. 1969); *Weeks* v. *Southern Bell Telephone & Telegraph Co.*, 408 F. 2d 228 (5th Cir. 1969). The defendant has assumed that its pregnant ground employees are unable to work productively beyond a certain period of time. The Supreme Court decision in *Phillips* v. *Martin Marietta Corp.*, 400 U. S. 542 (1971) "is compellingly clear on the point that Title VII of the Civil Rights Act of 1964, 42 U. S. C. A. Section 2000e-2 forbids employment opportunity discrimination on the basis of stereotyped or overly categorized distinctions between the male and female sexes." *Vick* v. *Texas Employment Comm.*, ... F. Supp. ....., No. 70H-1164 (S. D. Tex. August 30, 1973). Although pregnancy may involve the entire spectrum of personal and social sensitivities, it cannot be the basis for discrimination in view of *Phillips* and Title VII of the Act.

Moreover, there has been no showing that Delta's maternity leave policy is "reasonably necessary to the normal operation" of the airline's business. 42 U. S. C. § 2000e-2(e)(1). See 29 C.F. R. 1604.2 (1973). In *Weeks* v. *Southern Bell Telephone & Telegraph Co., supra,* the Fifth Circuit Court of Appeals

8. Transcript at 463 ff.

made it clear that the burden of proof is on the employer to demonstrate the justification of the B. F. O. Q. exception to certain jobs.

> In order to rely on the bona fide occupational exemption, an employer has the burden of proving he had reasonable cause to believe, that is, a factual basis for believing, that all or substantially all women would be unable to perform safely and efficiently the duties of the job involved.

Id. at 408 F. 2d 235. See also *Cheatwood* v. *South Central Bell Telephone & Telegraph Co.*, 303 F. Supp. 754 (M. D. Ala. 1969). In the present case the plaintiff challenges not merely a single job classification, but a policy which excludes *all pregnant women* from work after an arbitrary date. Since Delta failed to substantiate that pregnant women are not capable of efficiently working after the fifth month of pregnancy and because of the decisive nature of the enlightened medical testimony, it must be concluded that no B. F. O. Q. exception exists. In sum, Delta's five month maternity policy violates Title VII of the Civil Rights Act of 1964 and is a form of sex discrimination.

The next issue of whether the defendant violated § 703 of the Act in denying its pregnant employees disability pay, sick leave pay, or any other attendant employment benefits such as accrual of seniority and use of company insurance benefits is apparently one of first impression. There is a marked absence of criteria by which the scope of Section 703(e) of the Act may be measured. Comment, 51 N. C. L. R. 768, 781 (1973). As noted above, there are no judicial decisions comparable to this situation although various courts have considered sex discrimination in connection with some "fringe benefit" plans, *e.g.*, *Rosen* v. *Public Service Electric & Gas Co.*, 409 F. 2d 775 (3rd Cir. 1972), pension plans; *Hays* v. *Potlach Furests, Inc.*, 465 F. 2d 108 (8th Cir. 1971), overtime pay; *Bartness* v. *Drewrys*, 444 F. 2d 1186 (7th Cir. 1971), retirement plans; *Nixon* v. *Southern Bell Telephone & Telegraph Co.*, 334 F. Supp. 525 (N. D. Ga. 1971), retirement plans. Those cases

are distinguishable from the present one since they deal with disparate treatment of the sexes.

The only authority directly supporting the plaintiff's assertion that denial of sick and disability benefits to a pregnant woman is sex discrimination are those set forth in the EEOC guidelines which were first issued in 1972 at 29 C. F. R. § 1604.10, almost eight years after the enactment of the Act. The 1973 version of the guidelines at 29 C. F. R. § 1604.10(b) provides the "[d]isabilities caused or contributed to by pregnancy, miscarriage, abortion, childbirth, and recovery therefrom are . . . temporary disabilities and should be treated as such under any . . . insurance or sick leave plans available in connection with employment." While these agency guidelines are normally "entitled to great deference", *Griggs* v. *Duke Power Co.*, 401 U. S. 424, 434 (1971) and cases cited therein, they are not legally binding upon the court. Similarly, EEOC reports and decisions are not adequate legal authority. *Smith* v. *Universal Services, Inc.*, ... F. 2d ....., 4 E. P. D. ¶ 7617 (5th Cir. 1972). Not only is there no judicial determination that the regulations, particularly 29 C. F. R. § 1604.10(b), mean pregnancy is a sickness or disability and therefore entitles pregnant women to such benefits as a matter of law as the plaintiff implies, there appears to be no factual basis upon which these regulations were drawn. Furthermore, upon examining the actual wording of the guidelines it is not apparent that they actually equate pregnancy with disability or sickness.

For these reasons the plaintiff's interpretation of the EEOC guidelines is not acceptable. It is more appropriate to determine this issue based upon a common sense interpretation of the facts presented at the trial. Whether the plaintiff and her class are the victims of discrimination because of sex depends on the definition of pregnancy. After careful consideration of the evidence, including the medical testimony, it must be concluded that pregnancy is neither a sickness nor a disability. In the first place, pregnancy is, in most cases, a voluntarily imposed con-

dition and the fact of its existence demonstrates that a woman is quite healthy and normal, since sick is defined as "affected with disease; not well or healthy, ill, ailing, indisposed". Webster's Third International Dictionary, Unabridged (1969) at p. 2110. A reasonable approach dictates the holding that pregnancy is not sickness in the usual sense of the word.

Finally, the defendant's maternity policy is attacked as discriminatory because it permits those on such leave to be permanently replaced although they are granted priority for future employment and retain their benefits based on length of service. Other cases dealing with Title VII sex discrimination have declared as illegal the refusal to hire mothers, *Phillips* v. *Martin Marietta Corp., supra;* or those who may become mothers, *Cheatwood* v. *South Central Bell Telephone & Telegraph Co., supra;* or to discharge pregnant employees, *Doe* v. *Osteopathic Hospital of Wichita,* 333 F. Supp. 1357 (D. Kan. 1971) and cases cited therein. It arguably appears then that a refusal to rehire in an available similar job also would be violative of the Act, unless it can be shown that such refusal was dictated by business necessity, a limited exception to the Act's command against discrimination. *Griggs* v. *Duke Power Co., supra.*

The applicability of the "business necessity" doctrine depends upon much more than just convenience. "Necessity connotes an irresistible demand." *United States* v. *Bethlehem Steel Corp.,* 446 F. 2d 652, 662 (2nd Cir. 1971). For such a policy as Delta's to be maintainable, it must promote efficiency of operation and be indispensable toward that end. See *U. S.* v. *Jacksonville Terminal Co.,* 451 F. 2d 418 (5th Cir. 1971); *U. S.* v. *Bethlehem Steel Corp., supra; Robinson* v. *P. Lorillard Corp.,* 444 F. 2d 791 (4th Cir. 1971), *cert. den.* 406 U. S. 906 (1972). In an earlier case construing the "business necessity" rule, the Fifth Circuit Court of Appeals specifically noted that "[w]hen the defendant's conduct evidences an economic purpose there is no discrimination under Title VII. . . ." *Local 189*

United Papermakers & Paperworkers v. *United States,* 416 F. 2d 980, 992 (5th Cir. 1969). See also *Jones* v. *Lee Way Motor Freight, Inc.,* 431 F. 2d 245, 249 (10th Cir. 1970).

Delta justifies its failure to rehire the plaintiff on the ground, among others, that it cannot obtain temporary replacements for pregnant employees and that holding such a large number of positions open for women on maternity leave would be demoralizing to the remainder of its work force. The plaintiff points out, however, that, according to James A. York, a Delta vice president, the airline often makes use of temporary employees especially during "peak load" or rush times (Transcript at pp. 585 ff). She further maintains that Delta's own records (Plaintiff's Exhibit 13) reveal a much smaller number of employees on maternity leave, slightly over two percent. While it appears that Delta does employ temporary help at certain times during the year, such short term assistance is not used for periods as long as normally required for those on maternity leave. The feasibility of utilizing temporary replacements in such circumstances was not supported by the evidence.

Of greater importance, however, is the evidence that the plaintiff was not rehired because of a business "slump" at the time which affected Delta and others in the air travel industry. In fact, the plaintiff's old job was later abolished as a result of this adverse economic impact. This reality is substantiated by the failure of the plaintiff to obtain employment with any other Atlanta-based airlines, even though she was experienced in a phase of that business. Therefore, the evidence is uncontradicted that Delta's failure to re-employ the plaintiff was dictated by business prudence rather than sex discrimination.

Inasmuch as this determination necessarily applies only to the plaintiff's individual claim, the rights and demands of each of the members of the class must await adjudication until a subsequent hearing for damages and other relief.

In summary, the policy of the defendant as it existed in 1970 requiring female ground employees to take maternity leave at

the end of the fifth month of pregnancy without giving consideration to the individual abilities of such employees to continue working amounts to discrimination based upon sex and is violative of Section 703 of the Civil Rights Act of 1964. The defendant's refusal to re-employ the plaintiff at the conclusion of her maternity leave was due to economic necessity and not to sex discrimination. As stated, another hearing will be scheduled as soon as practicable to consider the remaining issues of damages and injunctive relief affecting the plaintiff and other members of the class.

So ordered this the 31st day of December, 1973.

/s/ ALBERT MARTIN
Judge, United States District Court for the Northern District of Georgia

IN THE UNITED STATES DISTRICT COURT
* * (Caption—72-169) * *

MEMORANDUM ORDER

The Defendant Liberty Mutual Insurance Company has moved the court to reconsider that portion of its Order of January 9, 1974 that found that the Defendant's policy of requiring female employees to return to work within three months of delivery or be terminated and its policy of denying the benefits of the disability income protection plan to female employees for any disability related to pregnancy or childbirth are violations of Title VII of the Civil Rights Act of 1964.

Defendant brings to our attention the decision of the Northern District of Georgia in *Newman* v. *Delta Air Lines, Inc.*, Civil Action No. 15681, issued December 31, 1973 of which this court was unaware at the time of its January 9, 1974 order. We have considered that Opinion and its Findings which, in many parts, are in complete accord with the Findings of this Court. However, we do disagree with the Finding of that court that pregnancy is not a "disability".

We do note that the decision in *Newmon* v. *Delta Air Lines, Inc.* was made after a consideration of a great deal of evidentiary material presented by both parties in that case concerning working conditions, the type of work performed, the preference of the woman, the accessibility of a hospital, and, of course, the possibility of complications to both mother and child in pregnancy cases. The court also considered whether or not the defendant Airlines maternity leave policy was "reasonably necessary to the normal operation of the airlines business".

The remainder of Defendant's motion continues the argument that it is impossible for Defendant to present any statistical material of the cost of extending disability benefits to pregnancy because no statistics are available. Whether such statistics are

available or not, the Defendant made no attempt to produce any such evidence before this court. The court cannot understand why the disability from performing work due to pregnancy or childbirth cannot be medically determined in the same way that disability from performing work is medically determined in all other disability cases. For a half century or more in this country, and for over a century in European countries these matters are decided in hundreds, if not thousands, of cases daily.

Finally, the Defendant argues that "because employees can, in some situations, make as much or more money by receiving disability income it can be assumed that females on pregnancy leave of absence will remain at home longer than normal." The Defendant presented absolutely no evidence to support this argument and as a trial judge who has seen hundreds of cases of soft tissue damage arising from the so-called "whip lash" type of injuries which produce few observable objective symptoms the court sees no basis for assigning the tendency to malinger as a sex-related characteristic. If, as defendant suggests, the employee can make as much or more money on disability than at work be true, then the fault lies with the particular insurance plan and not with the female sex. The motion for reconsideration will be denied.

In its Order the court stated it would enjoin the continuance of practices which the court found to be in violation of Title VII. The Plaintiffs were invited to submit the form of the injunction order and the Defendant has filed Notice of Appeal and asked for stay of any injunctive order. Under these circumstances the court will withhold the issuance of the injunctive order and amend the Order previously issued under the provisions of Fed. R. Civ. P. 54(b), as follows:

And Now this 20th day of February, 1974 it is Directed that final judgment be Entered in favor of Plaintiffs that Defendant's policy of requiring female employees to return to work within three months of delivery of a child or be terminated is in violation of the provisions of Title VII of the Civil Rights

Act of 1964; that Defendant's policy of denying disability income protection plan benefits to female employees for disabilities related to pregnancies or childbirth are in violation of Title VII of the Civil Rights Act of 1964 and that it is expressly Directed that Judgment be Entered for the Plaintiffs upon these claims of Plaintiffs' Complaint; there being no just reason for delay.

Order Filed.

/s/ GERALD J. WEBER
Gerald J. Weber
United States District Judge

cc: HOWARD SPECTER, ESQ.
LITMAN, LITMAN, HARRIS & SPECTER
Grant Building
Pittsburgh, Pennsylvania 15219

KALVIN M. GROVE, ESQ.
LEDERER, FOX AND GROVE
111 West Washington St.
Chicago, Illinois 60602

ROBERT A. PENNEY, ESQ.
175 Berkeley Street
Boston, Mass. 02226

CLEM R. KYLE, ESQ.
1305 Clark Building
Pittsburgh, Pennsylvania 15222

MILTON A. SMITH
General Counsel
RICHARD BERMAN
Chamber of Commerce of the
United States of America
1615 H Street N. W.
Washington, D. C.

GEORGE SMETANA, ESQ.
925 South Homan Avenue
Chicago, Illinois

LAURENCE D. EHRLICH
JULIAN D. SCHREIBER
120 S. LaSalle St.
Chicago, Illinois

ROBERT F. STONE, ESQ.
3025 Mellon Bank Building
Pittsburgh, Pa. 15219

BETH L. DON, ESQ.
Equal Employment Opportunity Commission
1800 G Street, N. W.
Washington, D. C. 20506

MR. WALTER P. DEFOREST
Attorney at Law
747 Union Trust Bldg.
Pittsburgh, Pa. 15219

JAMES F. BENNETT, ESQ.
Equal Employment Opportunity Commission
2038 Federal Building
Pittsburgh, Pa. 15222

IN THE UNITED STATES DISTRICT COURT

* * (Caption—72-169) * *

NOTICE OF APPEAL FROM PART OF ORDER

Notice is hereby given that Liberty Mutual Insurance Company, defendant above named, hereby appeals to the United States Court of Appeals for the Third Circuit from so much of the amended order entered in this action on the 19th day of March, 1974 and the order entered in this action on the 9th day of January, 1974, that finds that certain policies of the defendant are violations of Title VII of the Civil Rights Act of 1964, 42 U. S. C. 2000(e) *et seq.* and that this action may proceed as a class action pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure.

Dated: April ___, 1974.

/s/ KALVIN M. GROVE
Kalvin M. Grove
Lederer, Fox and Grove
111 West Washington Street
Chicago, Illinois 60602

ROBERT A. PENNEY
175 Berkeley Street
Boston, Massachusetts 02226

CLEM R. KYLE
1305 Clark Building
Pittsburgh, Pennsylvania 15222

IN THE UNITED STATES COURT OF APPEALS

* * (Caption—74-1233) * *

MOTION FOR LEAVE TO PRESENT BACKGROUND STATISTICS

To the Honorable, the Judges of the United States Court of Appeals for the Third Circuit:

Liberty Mutual Insurance Company, appellant herein, respectfully requests leave of this Court to present background statistics pertinent to this case, as contained in the attached sworn affidavit of its Assistant Vice President and Manager of Employee Relations, Kenneth D. Spaulding, and referred to in appellant's brief at nn. 16 and 19. In support whereof, Appellant states:

1. In its opinion, the lower court took judicial notice of national statistics concerning the number of births which occur in the country (A. 132). Although the record did not contain statistics relative to Liberty's experience, it did note that "We have no doubt that a large insurance company is well aware of the precise statistics." (A. 132.)

2. Liberty respectfully wishes to present to the Court, as background material deserving whatever weight the Court would accord it, statistics relative to Liberty's experience concerning the incidence of pregnancy among its staff.

Wherefore, appellant furnishes the attached affidavit of Kenneth D. Spaulding, and requests leave to present to the Court, for background purposes, the statistics therein contained.

KALVIN M. GROVE
STEVEN R. SEMLER
LEDERER, FOX AND GROVE
Sears Tower—Suite 7916
233 South Wacker Drive
Chicago, Illinois 60606

ROBERT A. PENNEY
175 Berkeley Street
Boston, Massachusetts 02226

CLEM R. KYLE
717 Liberty Avenue
Pittsburgh, Pennsylvania 15222
Attorneys for Liberty Mutual Insurance Company

STATE OF ILLINOIS }
COUNTY OF COOK } ss.

AFFIDAVIT OF KENNETH D. SPAULDING

Kenneth D. Spaulding, being duly sworn, deposes and says:

1. I am employed as Assistant Vice President and Manager, Employee Relations, with Liberty Mutual Insurance Company.

2. Liberty Mutual Insurance Company maintains, in the regular course of business, monthly statistics of the number of claims paid on its Income Protection Plan, and also statistics concerning the monthly incidence of pregnancy related absences, as well as the monthly incidence of employees who return to work at Liberty following pregnancy related absences. These records indicate that:

a. During the 54 month period between July 1, 1969 and December 31, 1973, the monthly incidence of paid income protection plan claims averaged 149 per month.

b. During the 31-33 month period ending July 1, 1973, which covers the period of commencement of maintenance of these statistics, up to and including those which have been computed:

(i) Of all female Liberty employees, an average of 38 per month left Liberty's employ due to pregnancy.

(ii) Over the same period, an average of seven employees per month who had left Liberty due to pregnancy, returned to Liberty's employ.

3. Liberty does not regularly maintain statistics on a "name by name" basis indicating which employees left due to pregnancy and which thereafter returned. The above figures only reflect the monthly average of those who leave due to pregnancy and the monthly average of those who, although not necessarily the same employees, return during the same period.

4. Further affiant saith not.

I swear that the foregoing is true to the best of my knowledge.

/s/ KENNETH D. SPAULDING
Kenneth D. Spaulding

Subscribed and sworn to before me this 14th day of May, 1974.

/s/ DOROTHY BESKIN
Dorothy Beskin

[NOTARY SEAL] *Notary Public*

IN THE UNITED STATES COURT OF APPEALS
For the Third Circuit

No. 74-1233

SANDRA WETZEL and MARI ROSS, on behalf of themselves
and all others similarly situated,
Equal Opportunity Commission as Amicus Curiae,
Appellees,

vs.

LIBERTY MUTUAL INSURANCE COMPANY,
a Corporation,
Appellant.

On Appeal From The District Court,
Western District, Pennsylvania

APPELLEES' RESPONSE IN OPPOSITION TO APPELLANT'S MOTION FOR LEAVE TO PRESENT BACKGROUND STATISTICS

The appellees, by their attorneys, Litman Litman Harris & Specter, P. A., pursuant to Rule 27(a) of the Rules of Appellate Procedure, hereby respond to the appellant's Motion For Leave to Present Background Statistics as follows:

1. The issues before this Honorable Court were decided by the court below on the appellant's motion for summary judgment based, *inter alia,* upon statistical evidence which was part of the record below.

2. In an appendix to its principal brief, the appellant has filed what purports to be a motion for leave to present background statistics in the form of an affidavit. Neither the affidavit nor the statistics were part of the record below and neither was presented to the trial court.

3. The appellant's motion does not constitute an attempt to correct or modify the record as permitted by Rule 10(e) of the Rules of Appellate Procedure.

4. The appellant stated below that no reliable statistics were available to it.

WHEREFORE, appellees pray this Honorable Court to deny the appellant's Motion For Leave to Present Background Statistics.

LITMAN LITMAN HARRIS &
SPECTER, P. A.

By: /s/ HAROLD A. SPECTER
Harold A. Specter
1320 Grant Building
Pittsburgh, Pennsylvania 15219
(412) 471-3200
Attorneys for Appellees

IN THE UNITED STATES COURT OF APPEALS

* * (Caption—74-1233) * *

APPELLANT'S RESPONSE TO APPELLEES' OPPOSITION TO MOTION FOR LEAVE TO PRESENT BACKGROUND STATISTICS

To the Honorable, the Judges of the United States Court of Appeals for the Third Circuit:

Comes now Liberty Mutual Insurance Company, and in response to Appellees' opposition to Appellant's motion for leave to present background statistics, states as follows:

1. The statistics contained in appellant's motion for leave to present background statistics solely pertain to the incidence of pregnancy among its staff. They do not involve calculation of the *cost* of including benefits for pregnancy related disabilities within appellant's sickness and accident income protection plan.

2. In proceedings before the District Court, undersigned counsel for appellant maintained that there was no reliable basis to estimate the *cost* of providing pregnancy related disability benefits due to, *inter alia,* the enormous difficulty of accurately assessing the bona fide period of real disability. Thus, appellees' statement in opposition that ". . . appellant stated below that no reliable statistics were available to it" is deceiving because the representation referred to does *not* relate to the background pregnancy incidence statistics contained in appellant's motion.

3. The subject case was decided on summary judgment and involves issues of significant judicial first impression in the United States Courts of Appeals: whether Title VII of the Civil Rights Act of 1964 requires an employer who maintains a sickness and accident income protection plan to include within the plan's coverage benefits for employees who become pregnant. Background statistics concerning the incidence of pregnancy in appellant's staff is, it is submitted, especially appropriate to this Court's consideration of this significant issue.

WHEREFORE, appellant urges that this Court grant its motion for leave to present background statistics.

Respectfully submitted,

/s/ KALVIN M. GROVE
Kalvin M. Grove
Lederer, Fox and Grove
Sears Tower—Suite 7916
233 South Wacker Drive
Chicago, Illinois 60606
Attorney for Appellant

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the attached Appellant's Response to Appellees' Opposition to Motion for Leave to Present Background Statistics was served by United States Certified Mail, postage prepaid, return receipt requested, on June 3, 1974, upon each of the following:

H. Spector, Esq.
Grant Building
Pittsburgh, Pa. 15219

Beth Don, Esq.
Equal Employment Opportunity Commission
Washington, D. C. 20506

Julian Schreiber
Borovsky, Ehrlich and Kronenberg
120 S. LaSalle Street
Chicago, Illinois 60603

/s/ KALVIN M. GROVE
Kalvin M. Grove

Office of the Clerk
UNITED STATES COURT OF APPEALS
For the Third Circuit
2046 U. S. Court House
Ninth & Chestnut Streets
Philadelphia 19107

Thomas F. Quinn
Clerk

June 12, 1974

Re: Sandra Wetzel, et al. v. Liberty Mutual Insurance Co., *Appellant*
(D. C. Civil No. 72-169)
No. 74-1233

Enclosed herewith is conformed copy of order entered today in the above entitled case.

T. F. QUINN, *Clerk*

kn

cc: To all parties

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT
No. 74-1233

June 3, 1974

SANDRA WETZEL and MARI ROSS, on behalf of themselves and all others similarly situated
Equal Opportunity Commission as amicus curiae

vs.

LIBERTY MUTUAL INSURANCE COMPANY, a corporation,
Appellant

(D. C. Civil No. 72-169)

Present: STALEY, GIBBONS and WEIS, *Circuit Judges.*

1. Appellant's motion for leave to present background statistics, as contained in the attached sworn affidavit of its Assistant Vice President and Manager of Employee Relations, Kenneth D. Spaulding, and referred to in appellant's brief at nn. 16 and 19
2. Appellees' response in opposition to appellant's motion for leave to present background statistics
(Due 5-25-74, received 5-30-74, not filed unless Court directs)

in the above listed for Monday, June 10, 1974.

enc.
fm

Respectfully,
T. F. QUINN
Clerk

The foregoing Motion is granted, without binding the panel which hears the appeal on the merits as to the use to which it may put such statistics.

By the Court,
/s/ JOHN J. GIBBONS
Judge

Dated: June 12, 1974.

STATUTES

THE CIVIL RIGHTS ACT OF 1964, AS AMENDED, 42 U.S.C. *§ 2000e, et seq.*

§ 703(a) [42 U. S. C. 2000e(2)(a)]:

(a) It shall be an unlawful employment practice for an employer—

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

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§ 706(a) [42 U.S.C. 2000e-5a]:

(a) The Commission is empowered, as hereinafter provided, to prevent any person from engaging in any unlawful employment practice as set forth in section 703 or 704 of this title.

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§ 706(b) [42 U. S. C. 2000e-5b]:

(b) Whenever a charge is filed by or on behalf of a person claiming to be aggrieved, or by a member of the Commission, alleging that an employer, employment agency, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, has engaged in an unlawful employment practice, the Commission shall serve a notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice) on such employer, employment agency, labor organization, or joint labor-management committee (hereinafter referred to as the "respondent") within ten days, and shall make an investigation thereof. Charges shall be in writing under oath or affirmation and shall contain such information and be in such form as the Commission requires. Charges shall not be made public by the Commission. If the Commission determines after such investigation that there is not reasonable cause to believe that the charge is true, it shall dismiss the charge and promptly notify the person claiming to be aggrieved and the respondent of its action. In detemining whether reasonable cause exists, the Commission shall accord substantial weight to final findings and orders made by State or local authorities in proceedings commenced under State or local law pursuant to the requirements of subsections (c) and (d). If the Commission determines after such investigation that there is reasonable cause to believe that the charge is true, the Commission shall endeavor to eliminate any such alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion. Nothing said or done during and as a part of such informal endeavors may be made public by the Commission, its officers or employees, or used as evidence in a subsequent proceeding without the written consent of the persons concerned. Any person who makes public information in violation of this subsection shall be fined not more than $1,000 or imprisoned for not more than one year, or both. The Commission shall make its determination on reasonable cause as promptly as possible and, so far as practicable, not later than one hundred and twenty days from the filing of the charge or, where applicable under subsection (c) or (d), from the date upon which the Commission is authorized to take action with respect to the charge.

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§ 706(e) [42 U.S.C. § 2000e-(e)]:

(e) A charge under this section shall be filed within one hundred and eighty days after the alleged unlawful employment practice occurred and notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice) shall be served upon the person against whom such charge is made within ten days thereafter, except that in a case of an unlawful employment practice with respect to which the person aggrieved has initially instituted proceedings with a State or local agency with authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, such charge shall be filed by or on behalf of the person aggrieved within three hundred days after the alleged unlawful employment practice occurred, or within thirty days after receiving notice that the State or local agency has terminated the proceedings under the State or local law, whichever is earlier, and a copy of such charge shall be filed by the Commission with the State or locai agency.

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§ 706(g) [42 U.S.C. § 2000e-5(g)]:

(g) If the court finds that the respondent has intentionally engaged in or is intentionally engaging in an unlawful employment practice charged in the complaint, the court may enjoin the respondent from engaging in such unlawful employment practice, and order such affirmative action as may be appropriate, which may include, but is not limited to, reinstatement or hiring of employees, with or without back pay (payable by the employer, employment agency, or labor organization, as the case may be, responsible for the unlawful employment practice), or any other equitable relief as the court deems appropriate. Back pay liability shall not accrue from a date more than two years prior to the filing of a charge with the Commission. Interim earnings or amounts earnable with reasonable diligence by the person or persons discriminated against shall operate to

reduce the back pay otherwise allowable. No order of the court shall require the admission or reinstatement of an individual as a member of a union, or the hiring, reinstatement, or promotion of an individual as an employee, or the payment to him of any back pay, if such individual was refused admission, suspended, or expelled, or was refused employment or advancement or was suspended or discharged for any reason other than discrimination of race, color, religion, sex, or national origin or in violation of section 704(a).

E.E.O.C. Employment Guidelines

[29 C.F.R. § 1604]

Sec. 1604.9 Fringe Benefits.—(a) "Fringe benefits," as used herein, includes medical, hospital, accident, life insurance and retirement benefits; profit-sharing and bonus plans; leave; and other terms, conditions, and privileges of employment.

(b) It shall be an unlawful employment practice for an employer to discriminate between men and women with regard to fringe benefits.

(c) Where an employer conditions benefits available to employees and their spouses and families or whether the employee is the "head of the household" or "principal wage earner" in the family unit, the benefits tend to be available only to male employees and their families. Due to the fact that such conditioning discriminatorily affects the rights of women employees, and that "head of household" or "principal wage earner" status bears no relationship to job performance, benefits which are so conditioned will be found a prima facie violation of the prohibitions against sex discimination contained in the Act.

(d) It shall be an unlawful employment practice for an employer to make available benefits for the wives and families of male employees where the same benefits are not made available for the husbands and families of female employees; or to

make available benefits for the wives of male employees which are not made available for female employees; or to make available benefits to the husbands of female employees which are not made available for male employees. An example of such an unlawful employment practice is a situation in which wives of male employees receive maternity benefits while female employees receive no such benefits.

(e) It shall not be a defense under Title VII to a charge of sex discrimination in benefits that the cost of such benefits is greater with respect to one sex than the other.

(f) It shall be an unlawful employment practice for an employer to have a pension or retirement plan which establishes different optional or compulsory retirement ages based on sex, or which differentiates in benefits on the basis of sex. A statement of the General Counsel of September 13, 1968, providing for a phasing out of differentials with regard to optional retirement age for certain incumbent employees is hereby withdrawn.

Sec. 1604.10 Employment Policies Relating to Pregnancy and Childbirth.—(a) A written or unwritten employment policy or practice which excludes from employment applicants or employees because of pregnancy is in prima facie violation of Title VII.

(b) Disabilities caused or contributed to by pregnancy, miscarriage, abortion, childbirth, and recovery therefrom are, for all job-related purposes, temporary disabilities and should be treated as such under any health or temporary disability insurance or sick leave plan available in connection with employment. Written and unwritten employment policies and practices involving matters such as the commencement and duration of leave, the availability of extensions, the accrual of seniority and other benefits and privileges, reinstatement, and payment under any health or temporary disability insurance or sick leave plan, formal or informal, shall be applied to disability due to pregnancy or childbirth on the same terms and conditions as they are applied to other temporary disabilities.

(c) Where the termination of an employee who is temporarily disabled is caused by an employment policy under which insufficient or no leave is available, such a termination violates the Act if it has a disparate impact on employees of one sex and is not justified by business necessity.